



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

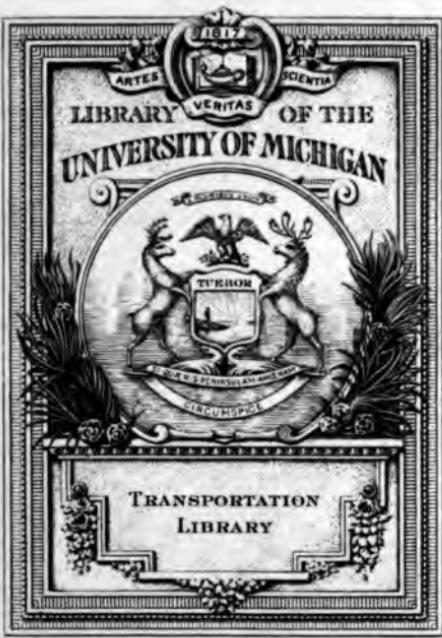
### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

A

756,389

DOPL



*fs*

# STATE RAILROAD CONTROL

WITH

*A HISTORY OF ITS DEVELOPMENT  
IN IOWA*

*FRANK H. DIXON, PH.D.*

ASSISTANT IN POLITICAL ECONOMY, UNIVERSITY OF MICHIGAN

WITH AN INTRODUCTION

BY

HENRY C. ADAMS, PH.D.

PROFESSOR OF POLITICAL ECONOMY AND FINANCE,  
UNIVERSITY OF MICHIGAN



NEW YORK: 46 EAST FOURTEENTH STREET  
THOMAS Y. CROWELL & COMPANY  
BOSTON: 100 PURCHASE STREET



LIBRARY OF  
ECONOMICS AND POLITICS.

EDITED BY

RICHARD T. ELY, PH.D., LL.D.

---

NUMBER NINE.

COPYRIGHT, 1896,  
BY THOMAS Y. CROWELL & COMPANY.

C. J. PETERS & SON, TYPOGRAPHERS  
BOSTON.



Transportation  
Library

HE  
2757  
1896  
D62



## Library of Economics and Politics.

Vol. I. The Independent Treasury System of the United States . . . . . \$1.50  
By DAVID KINLEY, Ph.D., Professor of Political Economy in the University of Illinois.

Vol. II. Repudiation of State Debts in the United States, \$1.50  
By WILLIAM A. SCOTT, Ph.D., Associate Professor of Political Economy in the University of Wisconsin.

Vol. III. Socialism and Social Reform . . . . . \$1.50  
By RICHARD T. ELY, Ph.D., LL.D., Professor of Political Economy, and Director of the School of Economics, Political Science, and History in the University of Wisconsin.

Vol. IV. American Charities. A Study in Philanthropy and Economics . . . . . \$1.75  
By AMOS G. WARNER, Ph.D., Professor of Economics and Social Science in the Leland Stanford, Jr., University.

Vol. V. Hull-House Maps and Papers.  
By RESIDENTS OF HULL-HOUSE, Chicago, Ill. Illustrated with Colored Maps. 8vo . . . . . \$2.50  
Special Edition with Maps mounted on Cloth. 8vo. \$3.50

Vol. VI. Punishment and Reformation. An Historical Sketch of the Rise of the Penitentiary System . \$1.75  
By FREDERICK H. WINES, LL.D.

Vol. VII. Social Theory. A grouping of Social Facts and Principles . . . . . \$1.75  
By JOHN BASCOM, Professor of Political Economy and Political Science, Williams College.

Vol. VIII. Proportional Representation . . . . . \$1.75  
By JOHN R. COMMONS, Professor of Sociology in Syracuse University.

Vol. IX. State Railroad Control, with a History of its Development in Iowa . . . . . \$1.75  
By FRANK H. DIXON, Ph.D., Assistant in Political Economy, University of Michigan.

Vol. X. Southern Sidelights: a picture of Social and Economic Life in the South during a generation before the War . . . . . \$1.75  
By EDWARD INGLE, A.B., Washington, D.C.

Vol. XI. Taxation and Taxes in the United States under the Internal Revenue System . . . . . \$1.75  
By FREDERIC C. HOWE, A.M., Ph.D., Cleveland, O.

## P R E F A C E.

---

My thanks are due to Hon. Peter A. Dey of Iowa City, Ia, whose sixteen years of almost continuous service as a member of the Iowa Railroad Commission—nine years as its chairman—have given him, in matters of railroad control, a rich experience, which has been constantly at my disposal. Hon. Frank T. Campbell of Des Moines, Ia., formerly a member of the Board of Railroad Commissioners, Mr. W. W. Ainsworth, the present secretary of the Board, and Mr. D. N. Lewis of the official force, have placed me under obligations to them by their readiness in furnishing me with all desired information. I wish to acknowledge the kind and helpful suggestions of the Editor of this series, and to thank Mr. Earle W. Dow of the University of Michigan for valuable assistance in proof-reading.

F. H. D.

BERLIN, *January*, 1896.



## CONTENTS.

---

INTRODUCTION . . . . .	Page 1
<b>PART I.—RAILROAD HISTORY BEFORE 1878.</b>	
Early railroad legislation.—Condition of roads in 1870.—State interference foreshadowed in early legislation.—Iowa's industrial condition in 1870.—Evils of discriminating rates.—The Grange movement.—The Maximum Rate Law.—Its judicial interpretation.—Effect of the law . . . . .	Page 19
<b>PART II.—THE ADVISORY COMMISSION.</b>	
CHAPTER I. <i>The Commissioner Law and Iowa's Condition in 1878.</i>	
—The Commissioner law.—Interpretation of the law in case of Keokuk and Des Moines Railway Company vs. Des Moines and Fort Dodge Railway Company.—Schedule of rates established in 1879.—What constitutes a reasonable rate.—The proper basis of rates.—Railroad building in Iowa.—The fall of rates, 1878–1884.—The industrial change in Iowa, 1875–1885,	Page 33
CHAPTER II. <i>Discrimination.</i> —Just and unjust discrimination.—Special rates to competitive points.—The long and short haul principle.—Discrimination in classification.— <i>Pro rata</i> rate.—Cost of service as an element in rates.—Elevator facilities.—Derangement of rates through interstate commerce.—Against Iowa towns.—Car distribution and the coal problem.—Wholesale principle and the abolition of jobbers' rates.—The car-load rate . . . . .	Page 48
CHAPTER III. <i>Pooling.</i> —The Iowa pool.—Views held by the Commission . . . . .	Page 77
CHAPTER IV. <i>Adequate Service.</i> —Abandonment of track.—Failure to furnish cars.—Delay in transit.—Construction of wyes.—Station facilities.—Handling cars of connecting lines.—Adequate train service . . . . .	Page 80

<b>CHAPTER V.</b> <i>Maintenance of Way.</i> —Obstruction and overflow.—Roads and bridges.—Fencing track.—Farm crossings and cattle-guards.—Highway and street crossings . . .	Page 90
<b>CHAPTER VI.</b> <i>Damages.</i> —Jurisdiction of the Board in such cases.—The Board as arbitrator . . . . .	Page 94
<b>CHAPTER VII.</b> <i>Overcharge.</i> —Investigation of the rate schedules by the Board . . . . .	Page 100
<b>CHAPTER VIII.</b> <i>Interstate Commerce.</i> —State vs. interstate traffic in Iowa.—Views of the Commissioners at different times on the subject of control over interstate commerce . .	Page 103
<b>CHAPTER IX.</b> <i>Railroad Reports.</i> —The law on the subject.—Difficulties encountered in securing reports.—Progress made by the Commission . . . . .	Page 112
<b>CHAPTER X.</b> <i>Investigation of Accidents.</i> —The law on the subject.—Injuries resulting from coupling cars.—The adoption of safety appliances . . . . .	Page 117
<b>CHAPTER XI.</b> <i>Conclusions.</i> —Purpose in the establishment of the Commission.—Its character.—Extent of compliance on the part of railroads.—Increase of powers in amendment of 1884.—Elements of success and failure . . . . .	Page 120

### PART III.—COMMISSION WITH POWER.

<b>CHAPTER I.</b> <i>The Commissioner Law.</i> —Causes for its passage.—History of its passage.—Provisions of the Act.—Methods of procedure under the law.—Change in the manner of choosing Commissioners . . . . .	Page 135
<b>CHAPTER II.</b> <i>The Law in Practice.</i> —Preparation of schedules.—Refusal of railroads to adopt.—Injunction suits.—Complaints of the Iowa jobbers resulting in a new classification.—Application for permanent injunction denied.—Adoption by railroads of Commission's schedule . . . . .	Page 147
<b>CHAPTER III.</b> <i>Discrimination.</i> —Principle of the new law.—Interstate shipments.—Trackage facilities.—Railroads with privileges of merchants.—Railroad control over depot grounds.—Joint rates.—Lack of power to establish.—Legislation.—History of the Joint Rate Act in the courts . .	Page 157
<b>CHAPTER IV.</b> <i>Questions of Jurisdiction.</i> —Interstate commerce.—Switching cases.—Suits brought to enforce orders of public right made under the State law not removable to United States courts . . . . .	Page 171

## CONTENTS.

ix

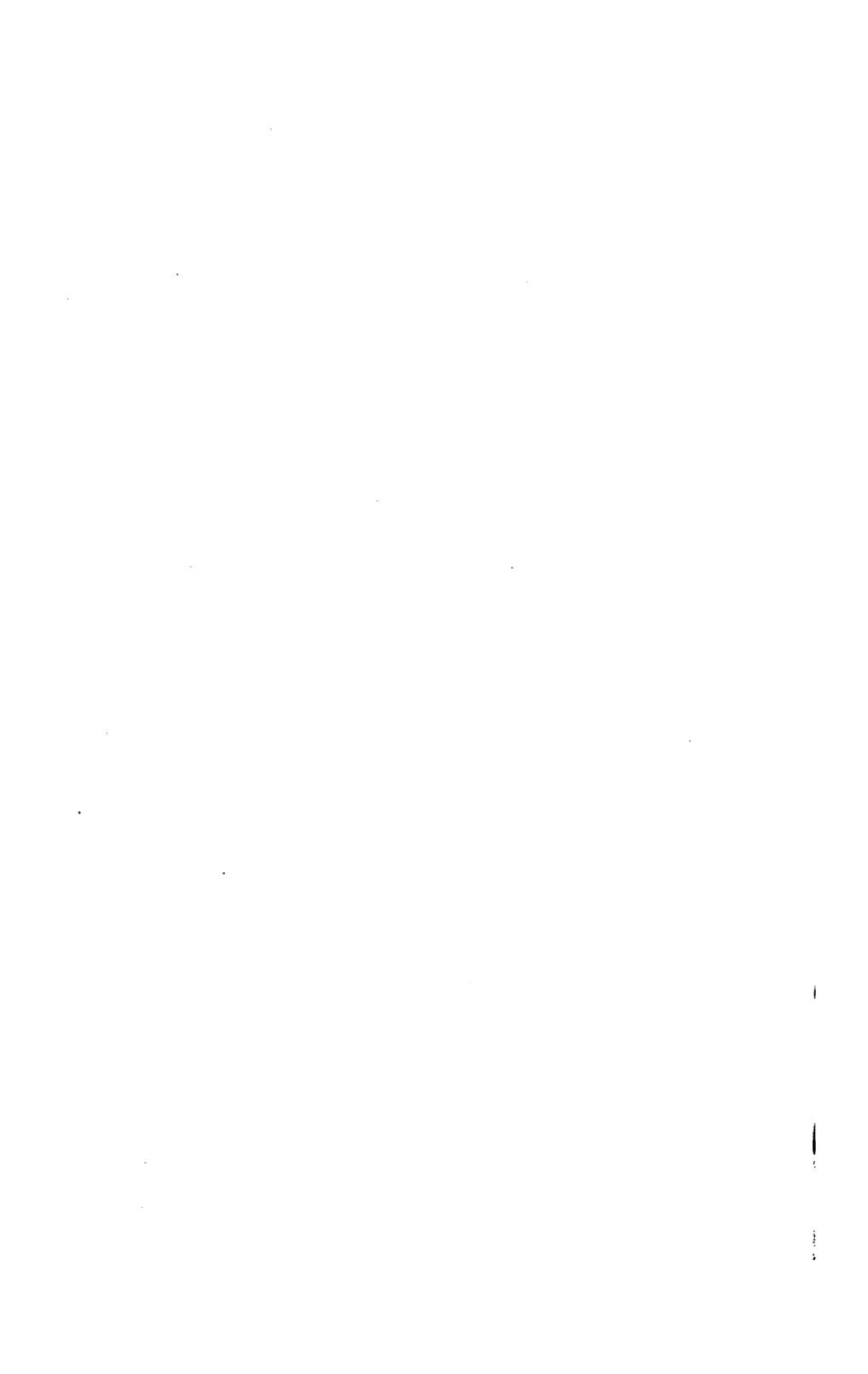
<b>CHAPTER V.</b> <i>Other Powers Exercised.</i> —Inadequate train service on branch lines.—Station facilities.—Farm crossings.—Railroad crossings . . . . .	Page 176
<b>CHAPTER VI.</b> <i>Methods of Procedure.</i> —Difficulties arising because latest statute did not repeal entirely previous statutes.—Discussion of the question by the Supreme Court.—Effect of the Court's decisions . . . . .	Page 183
<b>CHAPTER VII.</b> <i>Conclusions.</i> —Success of the strong Commission.—Stability of rates.—Increase in tonnage and revenue.—Development of home industry . . . . .	Page 194

## PART IV.—GENERAL CONCLUSIONS.

<b>SUCCESS OF A PARTICULAR FORM OF COMMISSION DEPENDENT UPON THREE CIRCUMSTANCES.</b> —Character of population.—Industrial condition.—Geographical situation . . . . .	Page 201
<b>COMPARISON OF MASSACHUSETTS AND IOWA.</b> —Advisory commission and commission with power.—Feeling between shippers and carriers.—Residence of stockholders.—Permanence of tenure of Commissioners.—Iowa law making Commissioners elective . . . . .	Page 201
<b>MULTIPLICATION OF STATE COMMISSIONS NOT A SOLUTION OF THE PROBLEM OF CONTROL.</b> —Interstate character of a large portion of the business.—Selfishness often governs the actions of State commissions.—Lack of harmony between States in classification of goods.—The problem to be worked out through a division of powers between State and national commissions,	
	Page 207

## APPENDIX.

<b>I. LAWS RELATING TO THE IOWA COMMISSION</b> . . . . .	215
1. The Advisory Commission Law of 1878 . . . . .	215
2. The Amendment of 1884 . . . . .	224
3. The Law of 1888.—Commission with power . . . . .	225
4. The Joint Rate Act . . . . .	247
<b>II. LIST OF IOWA COMMISSIONERS, 1878-1894</b> . . . . .	251
<b>III. TABLE OF COMPLAINTS PRESENTED TO THE IOWA COMMISSION, 1878-1894</b> . . . . .	<i>Insert</i>



## INTRODUCTION.

---

THE history of inland transportation in the United States when approached from the point of view of the modern railroad problem, naturally divides itself into four periods. The first of these periods came to a close about 1830; the second extends from 1830 to 1850; the third from 1850 to 1870; and the fourth from 1870 to the present time. It will be of great assistance to one who desires to understand the railroad problem and its bearing upon social, political, and industrial questions, to glance for a moment at the characteristic features of each of these periods; nor is there any way in which a special treatise like the one here presented, which deals with the railroad legislation of the State of Iowa, can so well be understood as by giving to this legislation its proper historic setting.

The attention of early statesmen was first called to the importance of internal improvements by the necessity of uniting the territory lying on the east and on the west of the Alleghany Mountains, by the strong bonds of commercial interests. This was very early recognized by George Washington. Before the Revolutionary War was brought to a close, he proposed a canal through central New York, and later urged upon Governor Harrison of Virginia the importance of connecting the Potomac and the Ohio Rivers. His letter on this

point, though by no means unfamiliar, may be appropriately quoted in this connection :—

"I need not remark to you" (wrote he to Governor Harrison of Virginia) "that the flanks and rear of the United States are possessed by other powers, formidable ones too ; and how necessary it is to apply the cement of interest to bind all parts of the Union together by indissoluble bonds, especially that part of it which lies immediately west of us, with the Middle States. For what ties, let me ask, have we upon the people (in the Mississippi Valley) ? How entirely unconnected with them shall we be, and what troubles may we not apprehend, if the Spaniards on their right, and Great Britain on their left, instead of throwing stumbling-blocks in their way, as they now do, should hold out lures for their trade and alliance ? What, when they gain strength, which will be sooner than most people conceive (from the emigration of foreigners who will have no particular predilection for us, as well as the removal of our own citizens), will be the consequences of their having formed close connections with either or both of these powers in a commercial way ? It needs not, in my opinion, the gift of prophecy to foretell."

The first systematic plan of internal improvements was drawn by Albert Gallatin, and submitted to the United States Senate in 1808. The United States at this time was in possession of a surplus, owing to the form into which the Federal debt had been thrown by the refunding scheme of Alexander Hamilton. This plan of the greatest of American financiers must be regarded as the most comprehensive of any plan for internal improvement ever devised in this country, the distribution of population and the condition of industries at the time it was presented being taken into consideration. It proposed continuous inland navigation from Massachusetts to North Carolina, and a turnpike

road from Maine to Georgia; it proposed that the four Atlantic rivers, the Susquehanna, the Potomac, the James, and the Santee, and the four corresponding rivers on the west of the mountains, the Alleghany, the Monongahela, the Kanawha, and the Tennessee, should be canalized to the highest practicable points, and these points connected by roads over the mountains. A canal was to be constructed to the Falls of the Ohio, and roads built to Detroit, St. Louis, and New Orleans; it was proposed to connect the Hudson River with Lake Champlain and with Lake Ontario, and to build a canal about Niagara Falls. In addition to these, local improvements of less national importance found place in this comprehensive scheme.<sup>1</sup> To interpret Gallatin's plan for internal improvements would necessitate a discussion of the controversies going on at this time within the party to which the secretary belonged. Of one point there can be no doubt; and that is, that in addition to the political interests involved in commercial intercourse between the various parts of the United States, the commercial importance of inland communication was also recognized.

Gallatin's scheme came to nothing. Had no other interests been arrayed against it, the approach of the war of 1812 would have thwarted the plan; and it was not until about 1820 that the people again turned their attention to the question of internal improvements. From 1820 to 1830 popular enthusiasm for the development of highways at the expense of the Federal treasury was intense. Many bills were introduced into Congress, and some were passed by that body, for the

<sup>1</sup> Adams, "Life of Gallatin," p. 350. ✓

appropriation of moneys to build highways and canals ; and, what may seem strange at the present time, no one ventured to utter the criticism upon this policy that it was an encroachment upon the domain of private enterprise. It was thought by many, however, that the Constitution did not give Congress adequate authority to undertake such enterprise.

In 1822 President Monroe vetoed what is known as the Cumberland-Road Bill, yet he was a warm supporter of the policy of improvements under the patronage of the Federal government. It was the veto by President Jackson of the Maysville-Road Bill, however, that brought the policy of public improvements under the direct control of the Federal government to a close. The significant fact for one who is studying the railroad problem at the present time is, that previous to 1830 there existed no considerable sentiment in this country in favor of the building and managing of public highways through the agency of private corporations.

The second period to which a complete study of the development of internal improvements in the United States would draw the attention of the student extends from 1830 to 1850. The vetoes of Presidents Monroe and Jackson did not cool the ardor of the people for highways at public expense, the full effect of these vetoes being to change the agency upon which the people relied for securing this end. The individual States were now imposed with the duty of doing what, according to a strict interpretation of the Constitution, it was thought the Federal government could not do. For many reasons which cannot here be narrated, the States formulated plans which were wholly out of pro-

portion to the resources at their command ; and, as is well known to every student of history, their efforts resulted in most cases in the bankruptcy of the States. It would be too much to say, however, that the experience of the States during this period is conclusive against the policy of government ownership of railroads and canals in this country. Were there no other reason that might be urged against such a conclusion, the fact that the opinion of engineers respecting the means of attaining cheap transportation underwent an entire change, would present an adequate explanation of the failure of the policies of the States. In 1830 railroads were unknown ; in 1850 reliance upon canals had been abandoned.

The purpose of this sketch, however, is to trace the development of public opinion respecting the relation of government to the means of internal communication, and on that account any excursus upon the peculiar conditions of this second period would be out of place. The important fact is, that no jealousy of the ownership and management of highways by government existed in the United States until about 1840, although from this time on a sentiment adverse to public ownership and control grew with great rapidity. The origin of such a sentiment was due, in the first place, to the failure of the policy of internal improvements by the States, and to the fact that the people found themselves under the necessity of paying taxes to liquidate bonds for which they had received no substantial return. It was due, in the second place, to the fact that men were beginning to appreciate the importance of a corporate organization of business. Many of the constitutions of

the States were so changed as to preclude the possibility of any further business experiments at public expense, while the legislatures hastened to grant special charters to corporations for the building of railroads, and to enact general incorporation laws. As in 1830 the Federal government stepped aside for State governments, so in 1850 the State governments assigned to corporations the duty of furnishing the means for inland transportation. The twenty years intervening were marked by a gradual decline of the theory that the development of a country through canals and railroads was a public function, and the gradual rise of the theory that this duty was one which could with greater safety be intrusted to private enterprise.

The third period in the history of transportation in the United States extends from 1850 to 1870, and, as already stated, is characterized by the application of the theory of individualism to corporations. This theory, it may be remarked in passing, was developed during the last century, before machinery was invented, and before the thought of an industrial corporation independent of State control presented itself as a possible contingency. It should further be noted that by 1850 the superiority of railroads over canals was fully recognized; and from this time on the problem of internal improvements is bound up in an extension of the railroad system. Although the States unloaded their responsibility upon corporations, it would be a mistake to assume that from this time private enterprise showed itself capable of meeting the expectation of the people without aid, unless, indeed, the act of begging, cajoling, and log-rolling be called private enterprise. A large

amount of private capital has, it is true, been invested in railroad securities; but a large amount of public capital also, and of capital secured by subscription, has been assigned to railroad construction. There is no means of determining the aggregate of county and municipal bonds which have been issued in favor of railroad corporations. It is known, however, that in 1870 there were outstanding \$185,000,000 worth of such bonds. Nor is it possible to determine the proceeds of land granted to railroads directly or indirectly by the Federal government; but it is known that two hundred and fifteen millions of acres of land were so granted, of which one hundred and fifty-three millions have been actually transferred to these corporations. The value of subscriptions in the form of rights of way, purchase of stock (when it was known that the purchase was a gift), and the like, cannot of course be accurately estimated. Taken all together, however, the extent of such assistance rendered by the public to corporations in the building of railroads has been enormous.

Throughout this third period the public assumed it might safely rely upon competition to guarantee fair treatment and fair prices, provided only a sufficient number of railroads were constructed. The chief interest, therefore, centred in the question of building, rather than in the question of regulating, railroads. The problem which engages the attention of statesmen and publicists at the present time, and which concerns itself primarily with fair rates and stable conditions, came into existence when, by the retirement of the State, competition was given an opportunity of working its inevitable results in the industry of transportation.

A full treatment of the problem thus brought into notice would turn our attention at this point to the peculiar character of transportation as a business, and to a statement of the reasons why this business tends inevitably toward centralization of industrial power. Such an analysis, however, lies outside of our present purpose, which is to show the bearing of a detailed study upon railroad control in a particular State to the great railroad problem.

Following the record of events, it appears that in 1870 the evils of unregulated competition in railroad control were beginning to make their appearance. The first great railroad pool was organized about this time; and it is not strange that the public, which had granted private corporations exclusive control over transportation, on the assumption that competition would guarantee fair treatment and just prices, should look with suspicion upon an attempt on the part of the managers of competing railroad systems to form a combination for the purpose of restraining competition. The propriety or impropriety of pooling is not here brought into question; we are concerned merely with the facts in the case. The formation of this pool may be accepted as one reason why, in 1870, the existence of a railroad problem in the modern sense of that word came to be generally recognized.

There was, however, a deeper cause of irritation. Impelled by the desire to increase traffic, the railroads had entered upon the policy of discrimination between persons and places, and this was the occasion of very definite and serious mischiefs. Here, also, it is necessary to rely upon the knowledge of the reader, for

a complete statement of the many social, political, and industrial evils which made their appearance about 1870, would extend this introduction into a treatise. Suffice it to say, that the industry of transportation is fundamental in the industrial organization of a community. He who controls the means of communication has it in his power to arbitrarily make or destroy the business of any place or any person; and it was because the public recognized this great power, which from its nature is dangerous when employed with a view to the private interest of corporations, that appeal was made to government for protection. With 1870 all the essential features of the modern railroad problem may be said to have merged into clear light.

The fourth period in the history of transportation in the United States may be characterized as a period of governmental control, or an attempt toward such control. It was at first the State governments, rather than the Federal government, that undertook to deal with the question, and many hundreds of statutes were placed among the laws of the States, which had for their aim the protection of the public from the arbitrary rulings of the corporations.

Without attempting to classify all these laws, it may be said that the policy which received the greatest favor, and which gave character to railroad legislation in this country, was the policy of control through commissions. Of commissions there are two sorts: the one of which has been called the weak commission; the other, the strong commission. The Massachusetts commission may be accepted as a type of the former; the Illinois or the Iowa commission, of the latter.

The chief difference between these is that a commission of the Massachusetts type, sometimes called an "Advisory Commission," confines its activity to investigation and report, the reports being made to the Attorney-General of the State, or to the legislature, according to the nature of the evils which it discovers. A commission of the Illinois type, on the other hand, in addition to the general functions of an advisory commission, is clothed with some degree of authority respecting the determination of rates. The chief significance of the history of railroad control in Iowa, to the student of the railroad problem, lies in the fact that this State has tried both sorts of commissions, and a history of its experience renders it possible to compare the results of the two types under substantially the same conditions.

It will be noticed by turning to the Table of Contents in this essay that Part II. treats of "The Advisory Commission" and the problems presented to it, and shows how a State beginning with the more conservative idea was ultimately driven to the granting of more extensive powers. In Part III. will be found a discussion of the "Commission with Power." It may be no breach of confidence to say that the author began his investigation with a strong prejudice in favor of the advisory type of railroad commission. The success with which he maintained this prejudice may be read in his own statements.

The controversy which arose between the railroads and the public respecting any phase of legislative control is familiar to all. The contention on the part of corporations was that railroad property was private in every sense of the word, the utmost they were willing

to admit being bound up in the phrase that railroads were "common carriers." The right of determining rates, and of adjusting contracts between themselves and other corporations, or between themselves and shippers, was claimed by them in its extreme form. In this view, speaking very broadly, they were not supported by the decisions of the courts. The chief significance of the cases which arose in connection with "Granger legislation" was the establishment of the principle that the public holds a positive interest in the manner in which the railroad industry is carried on, and that the legislature may, either directly or by means of commissions, take whatever steps are necessary to guard that interest. This was a decided departure from the theory entertained between 1850 and 1870. It requires but little analysis of the business of inland transportation to recognize that a law limited in its jurisdiction to the boundaries of a single State must be inadequate to exercise a salutary influence upon railroad traffic; and it is interesting to note that the States originally contemplated regulation of *inter-* as well as *infra-state* traffic. This assumption was at first supported; but in 1886 the situation was reviewed by the Supreme Court of the United States, and the principle clearly laid down that State legislation must confine itself to traffic beginning and ending within State boundaries. This decision was the occasion of the establishment of the Interstate Commerce Commission in 1887. The situation at the present time is, first, that government has the right to exercise a control over the business of transportation; and second, that this right, according to the accepted policy, is to be exercised through the co-operation of

State railroad commissions with the Interstate Commerce Commission. It is, indeed, a question whether this policy will ultimately succeed; but so stupendous are the interests bound up in a proper solution of the railroad problem that any statement respecting the actual workings of particular commissions must be accepted as an important contribution to the literature of the question.

The significance of a treatise like this of Dr. Dixon's upon railroad control in Iowa will be greatly emphasized when one recognizes what must be the future of this country in case the policy of railroad control through commissions proves to be a failure. To return to the theory which prevailed between 1850-1870 is impossible. The evils of private management under the direction of unregulated inter-corporate competition are too great, and have been made too clearly manifest, to warrant a moment's consideration of a return to the theory of exclusive private control. There are two possible lines of development, both of which call for an extension of governmental authority. The one is to increase the powers conferred upon commissions, so that they may become in fact, as they now are in theory, a positive influence in the conduct of railroad affairs; the other is to adopt the policy of government ownership and government management. As one who has studied this question with some care during a series of years, I can see no other solution. This is the situation as recognized by publicists, by statesmen, and by students; and the foregoing survey of the development of the business of transportation serves to emphasize this presentation of the question.

It is not possible to enter here upon a discussion of

the relative merits of these two programmes, but I may perhaps be permitted a single remark designed to place the question in its proper light. Those who have written upon the subject have, for the most part, confined their attention to questions of technical administration. The advocates of State ownership urged that the railroad system would be developed more in harmony with the general needs of society should the construction of railroads be under the guidance of the State. The advocates of corporate management, on the other hand, place greater stress upon the superiority of the service where railroads are administered by individuals who have a personal interest in the success of the enterprise.

The question of technical administration, however, does not appear to me to be the crucial question involved in the controversy. The management of the business of transportation, as well as of a great many other lines of business, is too successful in countries where it is undertaken, to warrant a convincing argument from this point of view against governmental administration. If plush cushions, Pullman cars, rapid transit, and courtesy of officials, are all that can be urged in favor of the present organization of the railroad system in the United States, it must be admitted that that system rests upon insufficient support.

The point at issue is entirely different. The question involved is a constitutional and not an industrial question. The discussion pertinent to the problem takes into consideration the influence which government ownership of a railway will have upon the fundamental structure of the State. The Constitution of the United States is unique in that it aims to guarantee the contin-

uance of liberty through a balance between the various governmental powers; and, notwithstanding the criticism of certain writers who judge of questions of governmental policy primarily from the point of view of administration, and who on that account fail to recognize the more fundamental sociological interests involved, it nevertheless remains true that the great body of the American people hold to the political ideas expressed in the Constitution. More than this is true. Not only is the theory of the balance of governmental powers relied upon for the perpetuation of political liberty, but the conception of a balance as between governmental functions on the one hand, and industrial functions on the other, is accepted as a criterion of a justly organized society.

With this thought in mind, and it can be suggested only and not discussed in this connection, what is the scholarly and statesmanlike position which one should assume respecting the question of public ownership of railroads? Is it not that the transfer of an industry to the State which at present gives employment to 900,000 men, and support to 4,000,000 citizens, would tend to destroy the balance necessary to the successful working of the existing form of government? The administration of railroads by government would increase the importance of the administrative department of government as compared with the other departments, and it would also throw so preponderating an influence into the hands of government as to destroy the hope of maintaining any just balance between governmental and individual interests. In this is found the only line of argument which may be made the basis of an enthusias-

tic support of commissions as a means of controlling the railroad industry. And when the issue, as thus presented, is clearly appreciated by the American people, it is believed that they will grant to commissions such powers as are necessary to enable them to adequately perform the duties which in theory are imposed upon them.

I can say nothing stronger to commend Dr. Dixon's treatise upon the railroad control in the State of Iowa. This State is peculiar in her geographical situation; and for many reasons narrated by the author, the railroad problem has presented itself to her citizens more directly and more intensely than to the citizens of other States. The Iowa railroad commission has been subject to greater criticism than any other commission in this country, very largely, it is believed, because it has, for the most part, kept itself independent of railroad control, and endeavored to clearly present the public interests involved in the problem. The State commissions have a permanent function. They are supplemental to the Federal commission, and any study which exposes either the weakness or the strength of the commission idea must commend itself to the serious student of the railroad problem.

HENRY C. ADAMS.

UNIVERSITY OF MICHIGAN,  
ANN ARBOR, MICH.



P A R T I.

*RAILROAD HISTORY BEFORE 1878.*



## PART I.

### *RAILROAD HISTORY BEFORE 1878.*

---

THE railroad question as it has worked itself out in the Eastern States is quite a different problem from that which has occupied the attention of Western legislators. The Eastern States were founded and developed industrially without any material aid from railroad facilities. The railroad was introduced into a society already well advanced, and fairly capable of handling the new problems as they arose. In the West, on the other hand, the building of railroads in a large measure preceded the economic development of the country, and was to a considerable extent responsible for it. A study of the early history of the Western States, strictly so called, reveals but few experiments with canals, and but little legislation concerning highway building and improvement. Railroad Acts were among the first discussed by Western legislatures.

Iowa's experience with railroads has been taken for consideration because, in the first place, Iowa was the centre of the Granger movement, and a study of its history reveals the steps by which the questions of railroad management were most bitterly and most thoroughly fought out and settled; because, in the second place, Iowa has experimented so frequently in the field of rail-

road control that its history includes nearly every phase of the question; in the third place, because the Iowa Commission has been one of the best managed and most successful in the country. If it has accomplished its purpose, it will furnish a model for States similarly circumstanced. If, on the other hand, this body has not succeeded in working out its ends, we shall have some ground for concluding that the solution of the problem is not to be sought along these lines.

The history of Iowa's efforts in the direction of railroad control is coextensive with the history of the Commonwealth. At the first session of the General Assembly of the State of Iowa, an incorporation law was passed providing for the building of railroads. Congress was memorialized for grants of land to aid construction, and that body responded with the Iowa Land Bill, approved May 15, 1856.

Corporations were organized to take advantage of the liberal policy of the government, yet for many years railroad building progressed but slowly. The building of the Union Pacific furnished the necessary incentive, for every Iowa road wanted the first Western connection.

In 1870 we find the State crossed from east to west by four great trunk lines. The northernmost of these, built by the Dubuque and Sioux City Railroad Company, reached Sioux City soon after 1870, and was leased to the Illinois Central. The Iowa Central Air Line, along the 42d parallel, pushed into Council Bluffs in the fall of 1867. It was operated at this time and thereafter by the Chicago and Northwestern Railroad Company. To the south of this was the line of the

Chicago, Rock Island, and Pacific Railroad Company, the first road surveyed in the State. Through trains were running from Davenport to Council Bluffs in June, 1869. The southernmost line, built by the Burlington and Missouri Railroad Company, reached the Missouri River late in the year 1867, and was thereafter operated under the corporate name of the Chicago, Burlington, and Quincy. The Chicago, Milwaukee, and St. Paul was not completed until the latter part of the decade. The Burlington, Cedar Rapids, and Northern operated only from Burlington to West Branch, while the Iowa Central possessed less than two hundred miles of road, extending from Mason City due south to Albia. Iowa at this time stood sixth in the Union, with a total of 2,683 miles of road.<sup>1</sup>

State interference with railroad management is foreshadowed in most of the earlier legislation.

An Act of the Fifth General Assembly, turning over to the railroads the lands which had been granted to the State by Congress, contained a clause requiring intersecting roads to furnish means for transferring passengers; and also declared in Sect. 14 that "Railroad companies accepting the provisions of this Act shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the General Assembly of Iowa, not inconsistent with the provisions of this Act and the Act of Congress making the grant."<sup>2</sup>

In an Act of the Eighth General Assembly (Chap. 59),

<sup>1</sup> Surpassed only by the States of Illinois, Pennsylvania, New York, Indiana, and Ohio.

<sup>2</sup> Chap. 1, Extra Session, approved July 14, 1856.

approved March 28, 1860, granting to the Cedar Rapids and Missouri River Railroad Company the right to build a road to connect with the Chicago, Iowa, and Nebraska Railroad at Clinton, it is stated that "the charge per mile for transportation of freight or passengers shall never exceed the regular charges for like service on the Chicago, Iowa, and Nebraska Railroad."<sup>1</sup>

April 8, 1862, an Act was approved (Chap. 159, 9th G. A.) requiring the offices of secretary, treasurer or assistant treasurer, and general superintendent of every railroad organized under Iowa law to be kept within the State, and providing for an annual report showing capital stock, bonds, and other indebtedness, length of road and amount in use, land grants and their disposition, gross receipts, net receipts, dividends, etc. If a company failed to report, a stockholder had the privilege of appeal to the court for the issuance of a peremptory writ of mandamus against the company; refusal to obey the writ to be followed by the appointment by the court of three commissioners to investigate the affairs of the company.

In 1862 an attempt was made to secure publicity of rates. Sect. 2, Chap. 169, 9th G. A., reads as follows:—

"In the month of September annually, each railroad shall fix its rates of fare for passengers and freights for transportation of timber, wood, and coal per ton, cord, or thousand feet per mile, also its fare and freight per mile for transporting merchandise and articles of the first, second, and third and fourth grades of freight, and on the first day of October following shall put up at all the stations and depots on its road a printed copy of such fare and freight, and cause a copy to remain posted during the year.

<sup>1</sup> Sect. 6.

For wilfully neglecting so to do, or for receiving higher rates of fare than those posted, the company shall forfeit not less than one hundred, nor more than two hundred dollars to any person injured thereby and sueing therefor.”<sup>1</sup>

In 1866 the General Assembly essayed to regulate rates; but the attorney general, to whom the question of constitutionality was submitted, held, in his opinion, that it was not in the power of the legislature to prescribe rates for railroads.<sup>2</sup>

The restrictive laws up to this time enacted proved of little account, and were seldom enforced. More vigorous regulation of some sort was imperative. The evils of private railroad management were beginning to be realized, and Iowa’s condition of dependence upon transportation facilities seemed to intensify the pernicious features of the prevailing policy.

With her rich soil, Iowa was in 1870 essentially an agricultural State.<sup>3</sup> It is inherent in the nature of the farming industry that it must always be found on the borders of settlement, and hence helplessly dependent upon transportation facilities. Iowa was, moreover, peculiarly situated. It was, and has always remained, the most western of the States dependent entirely upon an Eastern market for the disposal of its surplus. Kansas and Nebraska, though farther west, have found a market for some of their excess in the mining regions, a field which Iowa farmers have not been able to enter. Hence an indispensable requisite to the prosperity of Iowa interests was the low rate for the long haul.

<sup>1</sup> Amended April 14, 1870, Chap. 139.

<sup>2</sup> Larrabee, “Railroad Question,” p. 330.

<sup>3</sup> Iowa had at this time 116,000 farms, comprising over 15,000,000 acres, valued at nearly \$400,000,000.

The feeling, though it had little foundation in fact, was general that rates were too high;<sup>1</sup> and this feeling was intensified in times of depression, when they formed so large a proportion of the selling-price of the product. The agriculturists of the Northwest, however, had reason to complain not only of high rates, but even more of discriminating rates. Certain places, particularly competitive points, were favored, this being necessary to secure any business at all; while other places were charged with high rates that should compensate the roads for their sacrifices at competitive points. Certain shippers were favored at the expense of others. The roads had it within their power to make and unmake cities, to destroy the businesses of individuals, or to force their removal to favored points. The people were quickly up in arms against this policy. The flame of opposition was fanned by the bitter feelings aroused through absentee ownership, so prevalent in the Western States at this time. A well-settled conviction possessed the people that the owners of capital, directing their operations *in absentia* and through intermediaries, limited their interest in Western affairs to the amount of dividends which they could squeeze from shippers. The railroads unwisely made no effort to remove the grounds of complaint, and their relations with the people quickly became strained. From a condition of mutual distrust and bitter denunciation to that of organized opposition was but a step.

<sup>1</sup> A careful study of the rate question will disclose a rapid fall in rates from the close of the war down to 1870. This was due to many causes, among them being increased tonnage, water competition, substitution of steel for iron rails, and new and cheaper methods of administration.

The Grange became the self-appointed champion of the cause of the oppressed farmers. It had been organized for an entirely different purpose; but imbued with anti-monopolistic sentiments, and composed largely of those who were suffering the evils and injustices of existing methods of railroad management, the order determined in its corporate capacity to transform the desires of its individual members into effective demands.

The Grange movement had made rapid strides in Iowa. In the year 1874 the number of subordinate granges was 2,000, with over 100,000 members. The Farmers' Anti-Monopoly Convention<sup>1</sup> which met at Des Moines, Aug. 13, 1873, declared, as the basis of its future political action, "that all corporations are subject to legislative control; that those created by Congress should be restricted and controlled by Congress; and that those under State laws should be subject to the control of the States creating; that such legislative control should be an express abrogation of the theory of the inalienable nature of chartered rights, and that it should be at all times so used as to prevent moneyed corporations from becoming engines of oppression." It resolved further, "that the legislature of Iowa should by law fix the maximum rates of freight to be charged by the railroads of the State, leaving them free to compete below the rates." It also declared itself as opposed to all future grants of land to railroads or other corporations, and insisted that the public domain should be held sacred to actual settlers.

In the midst of the agitation came the panic of 1873. Prices of agricultural products fell rapidly, while trans-

✓<sup>1</sup> Martin, "History of the Grange Movement," p. 513.

portation rates eastward remained about the same, and thus formed a much larger proportion of the price of the product than before. This gave the movement its needed incentive, and anti-railroad legislation became the issue in the campaign of 1873. A legislature was sent to Des Moines vowing vengeance on the railroads; and in 1874 it passed the Maximum Rate Law,<sup>1</sup> embodying the ideas and principles of the new power in politics. "Up to this time practically all legislation had been for the purpose of facilitating the construction of railroads; and although some assertions of power had been introduced into laws enacted, and some restraining clauses put in, they were rather in the nature of the injunctions of an indulgent parent for the guidance of a favored child, than the positive orders of a stern and unbending parent whose temperament makes every action of his son censurable."<sup>2</sup>

"An Act to Establish Reasonable Maximum Rates of Charges for the Transportation of Freight and Passengers on the Different Railroads of this State," approved March 23, 1874, classified railroads according to their gross earnings per mile within the State for the preceding year. Class "A" included all railroads whose gross earnings per mile were \$4,000 or more; Class "B," \$3,000 or any sum less than \$4,000; Class "C," less than \$3,000. In passenger transportation, roads in Class "A" were allowed to charge three cents per mile, Class "B," three and one-half cents, and Class "C," four cents. A carefully detailed schedule of rates was

<sup>1</sup> Approved March 23, 1874.

<sup>2</sup> Dey, "Railroad Legislation in Iowa," in *Iowa Historical Record*, October, 1893, p. 555.

prepared for transporting freights, goods, and merchandise for every mile from one up to three hundred and seventy-six, followed by a classification of goods. Railroads in Class "A" could charge no more than ninety per cent of the scheduled rates; railroads in Class "B" could charge five per cent, and in Class "C" twenty per cent, in addition to scheduled rates. To assist in the classification of roads, each corporation was required under penalty to return to the governor annually a statement of its gross receipts upon the entire road within the State. A copy of the rate was required to be kept posted for public inspection. Discrimination was legislated against in the following section:—

"No railroad company shall charge any person, company, or corporation for the transportation of any property, a greater sum than it shall at the same time charge and collect from any other person, company, or corporation for a like service from same place, and upon like conditions; and all concessions for rates, drawbacks, and contracts for special rates, founded upon the demands of commerce and transportation, shall be open to all persons, companies, and corporations alike."<sup>1</sup>

The Act took effect July 4, 1874. It did not interfere at all with competition, but in every way possible made for its free and easy working. It was charged by the railroads that the statute reduced the rates to so low an average that it was impossible to do a profitable business under them. What the legislature actually did was to equalize the rates, bringing the average to a higher point than it had been under the discriminating charges established by the railroads themselves. Had the roads accepted the legislation of the people in the

<sup>1</sup> Sect. 10.

spirit in which it was enacted, and honestly endeavored to live up to its provisions, it is quite probable that future legislation would have been delayed, and might never have been necessary; but the attitude assumed by the railroads was that either of utter indifference or of open hostility.

The resistance of the corporations to the enforcement of the law rendered judicial interpretation and sanction for the Act necessary; and the outcome was that famous series of decisions by which it was settled once for all that the State had a right to establish limitations upon the power of railroad companies to fix the price at which they should carry passengers and freight.<sup>1</sup>

The law was repealed in 1878. The reasons for this action are variously given. Governor Larrabee, who represents fairly the Granger sentiment, maintains that the law, though perhaps imperfect in some of its details, was moderate and just, and met with the favor of the majority of the people.<sup>2</sup> He attributes its repeal to the persistent opposition of the corporations, who misrepresented its workings to the people, and manipulated its provisions in such a way as to make it odious. Commissioner Dey, on the other hand, states the impression at the time of the repeal to have been quite general that

<sup>1</sup> Munn. vs. Illinois, 94 U. S. 113; C. B. & Q. Ry. Co. vs. Iowa, 94 U. S. 155; Peik vs. C. & N. W. Ry. Co., 94 U. S. 164, and others. The principle laid down in these cases was modified in 1890 in the Minnesota cases, in which it was decided that rates to be reasonable must be remunerative to the companies, their reasonableness to be determined by the courts (134 U. S. 418, 467). For later discussion of the question, see Budd vs. N. Y., 143 U. S. 517, and Reagan vs. Farmers' Loan and Trust Company, 154 U. S. 362.

<sup>2</sup> "Railroad Question," p. 334.

the law was too rigid, and did not afford the companies the latitude necessary to conduct their business satisfactorily to themselves and their patrons ; in other words, the general feeling was that regulation had been carried too far, and that greater freedom of action was necessary. It has been repeatedly charged that the effect of the law was to check railroad building, and to prevent the roads from being efficiently operated. To what extent this was true it is impossible to determine, for we cannot measure accurately the effect of the different influences at work during these years. Those who framed the Act and aided its passage are emphatic in their claims that its operation was entirely satisfactory. Certain it is that with the passage of the statute of 1878 came a great revival in railroad building, and many schemes which had been under consideration for some years were at once put into effect.

The great criticism to be made upon the Granger law is, that, although severe in its provisions, it was not vigorously enforced. Penalties in great numbers were imposed, but it is not known that any of them were ever collected. The proper machinery for effective control was wanting. Even Governor Larrabee "was convinced that a strong and conscientious commission would be a much more potent agency to secure reasonable rates for the shipper than a maximum tariff law without proper provisions for its efficient enforcement; they, in short, preferred a commission without a tariff law, to a tariff law without a commission."<sup>2</sup>

Though of little direct benefit to Iowa interests, the

<sup>1</sup> "Railroad Legislation in Iowa," p. 558.

<sup>2</sup> "Railroad Question," p. 335.

indirect advantages of the Granger legislation are too important to be overlooked. They are thus summarized by an able writer upon railroad questions:—

“The corporations owning the railroads have been made to realize that those roads were built for the West, and that, to be operated successfully, they must be operated in sympathy with the people of the West. The whole system of discriminations and local extortions has received a much needed investigation, the results of which cannot but mitigate or wholly remove its more abominable features; finally, certain great principles of justice and equality, heretofore too much ignored, have been driven by the sheer force of discussion, backed by a rising public opinion, into the very essence of railroad policy. . . . The burnt child fears the fire; and the Granger States may rest assured that, through an indefinite future, the offensive spirit of absentee ownership will be far less perceptible in the management of their railroads than it was before and during the great railroad mania.”<sup>1</sup>

✓<sup>1</sup> “The Granger Movement,” C. F. Adams, *N. A. Review*, April, 1875, p. 423.

P A R T   I I.

*THE ADVISORY COMMISSION.*



## PART II.

### *THE ADVISORY COMMISSION.*

---

#### CHAPTER I.

##### **THE COMMISSIONER LAW AND IOWA'S CONDITION IN 1878.**

THE sentiment which had found expression in active opposition to the Maximum Rate Law while it was in operation, and which had culminated in the final repeal of that Act, demanded some other form of railroad control than that which had, they insisted, resulted so disastrously. Massachusetts had experienced marked success with its commission system, and had thereby turned the attention of the entire country to this form of control. The sentiment in favor of the commission system, and that in its weak form, dominated the Iowa legislature; and the Iowa law, which was passed in 1878 after vigorous discussion, was based upon the Massachusetts statute.

The law establishing a Board of Railroad Commissioners<sup>1</sup> provided for the appointment by the Governor, with the advice of the Executive Council, of three persons, one of whom should be a civil engineer, to hold office for three years, one member retiring each

<sup>1</sup> Chap. 77, 17th G. A., approved March 23, 1878.

year. These persons were not to be pecuniarily interested in any railroad, and were to be chosen as nearly as practicable from the eastern, central, and western portions of the State. The Commission was to examine into the condition of the roads, rolling-stock, etc., and the rates of fare, and when not satisfactory, to inform the railroad company in writing of its disapproval. Semi-annual examination of bridges was required. When a bridge was deemed unsafe, the company was to be informed; and if repairs were not made within three days, the Commissioners were empowered to stop the running of trains over it. Annual reports containing statistics of railroads were to be submitted to the Governor, covering the cost of the road and equipment, amount of land-grants, capital stock, etc. To enable the Commission to comply with this provision, the railroads were required annually to make returns to the Commissioners according to a prescribed form. The Commissioners were given power to investigate the books of the companies, to examine officers under oath, and to issue subpœnas, refusal to respond to the Commissioners to be considered a misdemeanor, punishable in court. Railroad companies were required to furnish suitable cars for all purposes, to transport freight with reasonable despatch, to receive empty or loaded cars of connecting roads, and to demand for this service no greater compensation than was received from any other connecting road for a similar service. Discrimination against persons and places was prohibited, and penalties prescribed for violation of these provisions, to be recovered in court.

“In all cases where complaints shall be made in

accordance with the provisions of Sect. 15 hereinafter provided, that an unreasonable charge is made, the Commissioners shall require a modified charge for the service rendered such as they shall deem to be reasonable, and all cases of a failure to comply with the recommendation of the Commissioners, shall be embodied in the report of the Commissioners to the Legislature, and the same shall apply to any unjust discrimination, extortion or overcharge by said company or other violation of law.”<sup>1</sup>

Upon request of the mayor and aldermen of a city or town, or the trustees of a township, or of twenty-five legal voters, the Commissioners were required to investigate the rates of fare within such city or town, reasonable notice of their intention being served upon the company. If they should deem the complaint well founded, they were to inform the company, and also report the fact to the Governor.

This law did not repeal the sections of the previous law<sup>2</sup> providing for the annual reports of the railroads to the Governor, the classification of the roads upon the basis of gross earnings, and the establishment of passenger fares in accordance therewith. Merely an advisory power was vested in the Commission. No authority was granted to enforce its decrees. Violations of the orders of the Commission were to be mentioned in the annual report to the legislature, and the law relied upon this element of publicity to render the recommendations of the Commission effective.<sup>3</sup>

The interpretation of the statute was made almost

<sup>1</sup> Sect. 13.

<sup>2</sup> Chap. 68, 15th G. A.

<sup>3</sup> For text of law, see Appendix I.

immediately possible by a complaint,<sup>1</sup> preferred by the Keokuk and Des Moines Railway Company against the Des Moines and Fort Dodge Railway Company, which charged the latter with refusing to receive the cars of the complainant with which it connected at Des Moines, at least without prepaid tolls, while it received the cars of the Chicago, Rock Island, and Pacific without any prepayments. The defendant moved to dismiss the complaint, basing its motion upon the following propositions: 1, that the matters complained of, if true, did not constitute a public grievance; 2, that the jurisdiction of the Board of Railroad Commissioners extended to public, and not to private, grievances; 3, that the jurisdiction of the Board of Railroad Commissioners could only be invoked in a manner prescribed in Sect. 15 of the Act constituting the Board, namely, upon the application of the mayor and council of an incorporated town or city, or the trustees of a township, or, upon their refusal to act, upon the petition of twenty-five or more legal voters of any given city, town, or township. The Commissioners, in reply, held that Sect. 15 of the Act was restricted in its meaning, and applied only to two classes of cases: 1, cases of examination of the rate of passenger fare or freight tariff charged by any railroad company; 2, cases of examination into the condition and operation of any railroad any part of whose location lay within the limit of such city, town, or township. But the third section of the Act gave the Commissioners "general supervision" of all railroads in the State operated by steam—words of the widest signification. Moreover, it was provided that the Commissioners "shall

<sup>1</sup> Report, 1878, p. 5.

inquire into any neglect or violation of the laws of this State by any railroad corporation doing business therein, or by its officers, agents, or employees." This requirement was consistent only with untrammelled liberty of inquiry, investigation, and research. Hence it was held that the proposition that the jurisdiction of the Board could only be invoked in the manner prescribed in Sect. 15 was untenable. They also held that the complaint constituted a public, and not a private, grievance. The aim of the Commission was to "promote the security, convenience, and accommodation of the public, which public is only an aggregation of private persons ; and in this view, a grievance to the humblest citizen, unless exceptional, becomes a public grievance." The charge was that shippers along one line of railroad were hindered from patronizing one of the connecting routes to market, and were encouraged to the sole use of another route. This, if true, was plainly a public wrong ; and to prevent this, Sect. 10 of the law was enacted, which required railroads to receive and handle cars of connecting roads without discrimination. The Commissioners therefore refused to dismiss the complaint, and asserted their duty to inquire into the truth of the petitioner's allegations. Thus, at the very outset, the Board evinced its determination to assume all powers delegated to it by the statute, and to guard them jealously.

The new law left the determination of the rates entirely to the companies. It was natural that the experiment, after four years of dissatisfaction under the legislature-made rates, should be watched with interest. Could a Commission, whose power over the railroads rested entirely upon the justness and fairness of its

decisions, compel the railroads to furnish equality of opportunity to all shippers? This was the question, the answer to which was so eagerly awaited.

The railroads had been ostensibly operating under the Granger rates; but in the fall of 1878, through complaints entered with the Commission,<sup>1</sup> it was found that the Chicago and Northwestern, the Chicago, Burlington, and Quincy, and the Chicago, Rock Island, and Pacific had agreed upon a tariff of rates higher than that formerly in effect. An informal conference of the railroad officers and the Commissioners was held in March, 1879, when the question of rates was thoroughly discussed, the railroad managers evincing a genuine desire to meet the wishes of their patrons. As a result of this conference, a new schedule was issued by the railroads, in which the rates that had been recently promulgated were considerably reduced. These rates, with a few material changes, continued in force until the passage of the Interstate Commerce Law, when the subject again came up for discussion and action.

The determination of what constitutes a reasonable rate has always proved a troublesome question. The Commissioners held that it was a problem that could not be solved on general principles, but that each case must be taken by itself, and passed upon by the Board judicially. The rate should never be below what is reasonable for both carrier and shipper. The railroad must secure enough to pay expenses and a reasonable profit; but the rate must not be so high as to cripple the industry, and drive the shipper out of business.

<sup>1</sup> Report, 1880, p. 7.

"The railroad tariff that brings out the greatest volume of business, and at the same time makes a reasonable return for services rendered, is the best, both for the companies and for the public." Again, they say that a proper rate is neither more nor less than a reasonable rate; and when all controlling circumstances are considered, the real value of the service rendered constitutes a reasonable rate; that "from the standpoint of the carrier's interest it is needless to make a rate less than what is fair and reasonable;" and that "from the shipper's standpoint, the rate should not be more than fair and reasonable."<sup>1</sup>

Professor Hadley shows clearly the fallacy in this statement of the Commissioners. He says:—

"A reasonable rate 'from the standpoint of the carrier' is one which gives a reasonable profit above operating expenses. A reasonable rate 'from the shipper's standpoint' is one which leaves the shipper a fair margin of profit above cost of production of the goods. The trouble at the present time (1885) is that the price of wheat is so low that it is impossible to get a reasonable profit for either party. A rate which is low enough to be reasonable for the shipper will be utterly unreasonable to the railroad, and *vice versa*. The Commissioners wish to apply two independent standards which cannot be made to meet. The only practical solution of the difficulty is a compromise based upon a careful consideration of *what the traffic will bear*, the necessities and interests of the shippers as well as the railroads being taken into account. But any such compromise is far from meeting the demand of the Commissioners that it should be reasonable for each party. On the contrary, from the standpoint of either party separately, it would be utterly unreasonable."

"We have no doubt that the sagacity of the Iowa Commission

<sup>1</sup> Report, 1882, p. 556. Case of Township Trustees of Red Oak vs. C. B. & Q.

would prevent them from making serious trouble by undertaking to apply their principle to specific cases which it did not fit. Even in the decision quoted, they recognized the necessity of considering value of service. But it is none the less a pity that they should enunciate a theory of railroad rates which breaks down at the critical point when you attempt to apply it. And the evil is all the more serious because nine-tenths of the people who read the Iowa report will accept this theory as self-evident truth, and thereby justify themselves in the use of it from their own standpoint without reference to that of any one else.”<sup>1</sup>

In a case of overcharge presented in the sixth annual Report of the Commission, where the question of a reasonable rate was to be settled with reference to a road which had never paid dividends to the stock-holders, President C. E. Perkins of the Chicago, Burlington, and Quincy said :—

“ The question of what constitutes a reasonable charge for transportation by rail is one to which, I think, no general answer can be given; each particular case must stand by itself; a reasonable rate would seem to be a rate for which good reasons can be given. . . . If the rates charged in this instance were unreasonable, it must be shown, not by comparison with the rates charged by other roads, or under other circumstances and conditions, but by proving that they interfere with the transaction of a commerce which it is for the interest of a public to have carried on. . . . The cost in any particular case cannot obviously be taken as a basis; nor does the average cost on any particular railroad constitute a basis. Average cost all over the country undoubtedly exercises a great influence in the determination of rates ; but we are all familiar with a good many railroads which have never been able to obtain what it cost them for the transportation of freight and passengers, meaning by cost the actual cost of operation and maintenance, and a moderate rate of interest upon the investment.”<sup>2</sup>

<sup>1</sup> “ Railroad Transportation,” p. 131 (note). <sup>2</sup> Report, 1883, p. 607.

The question as to what should form the basis of a rate was a frequent subject of discussion. The Commission concluded that it was manifestly impossible to base it upon cost of service. The most practicable method seemed to be to charge what the traffic would bear, and by placing high rates on goods of high value, and lower rates on less valuable goods, the business could be done satisfactorily and without injury to the interests concerned. The rates must, of course, be remunerative, but this did not mean that watered stock must yield dividends.

The building of railroads in Iowa, as in all of the Western States, was rapid, and carried on with a recklessness that was characteristic of the time. The State of Iowa, which contained in 1870, 2,683 miles, had, at the opening of the Commissioner period in 1878, 4,157 miles of road. Of this amount, 2,953.88 miles were owned by the companies running them, and 1,203.27 miles leased and operated mainly by foreign corporations. During the next four years the increase in railroad mileage was very great; and at the close of the year 1881 there were 5,426 miles in operation, only two of the ninety-nine counties of the State being unprovided with railroad facilities. All places that had any commercial aspirations offered inducements for the building of competitive lines, that a lowering of freight charges might be effected through the competition between different roads. It is difficult to see what other inducements, aside from local aids, could have led the railroads to extend their lines so rapidly; for it is certain that the earnings were not sufficiently great to lead to large undertakings. It

is probable, however, that they had faith in the ultimate development of the country, which would accrue to their benefit in increased tonnage. Hence they pushed ahead of settlement, and aimed to bring into subjection as large an amount of territory as possible. The next year, 1882, showed the marvellous increase of over 900 miles in the State's total equipment. From that time on, mileage grew steadily year by year, until the last report of the Board (1894) gives a total of 8,489.88 miles. Commissioner Dey testified before the Cullom Committee in 1885 that Iowa had then all the mileage that she needed, and expressed the opinion that it would be wise to establish a tribunal before which railroads should be obliged to justify extensions, before permission should be given for construction. In this way the shippers would be relieved from the necessity of paying for the support of roads which fulfilled no industrial function, and which never should have been built. This evil would not have been so great had the roads been economically built; but "hardly a road in the State has been built but represents largely more in stock and bonds than the road cost in money to build."<sup>1</sup> The tendency of the railroads was to increase the capital as rapidly as earnings increased, the only limit to this process being the amount upon which the lines could be made to pay interest. The Commissioners suggest that the roads might be required to secure permission from the legislature before making new issues of stock. Such a proposal has much in its favor. Its solution, however, would probably be somewhat complicated by the interstate character of most of the roads.

<sup>1</sup> Report, 1878, p. 39.

The rates of freight traffic, notwithstanding the cries of many of the shippers to the contrary, steadily fell from 1878 to 1884.<sup>1</sup> The reasons for this decline have already been noted. The inventions in railroad construction and the new methods in railroad management<sup>2</sup> were in part responsible. Yet the most important cause was the increasing tonnage<sup>3</sup> which permitted of greater economy in management. Railroads are subject to the so-called law of increasing returns, according to which, after a certain industrial stage has been reached, additional operations may be undertaken with less than proportional cost. Steady increase of business permitted the realization of this law in Iowa. "The unparalleled wealth of production has, with a force greater than any legislative decree, forced the rate per ton per mile for hauling down until the great roads of Iowa are enabled to show that it now costs but little more than one cent per ton per mile to haul our products to market, and the prospect in the near future is that the cost will be less than one cent per ton per mile."<sup>4</sup>

The Commissioners estimated that the reductions in rates from 1874 to 1880, about half a cent per ton per mile, afforded a net saving of \$52,000,000 on the exported portion of the grain, meat, and dairy products of the Northwest for 1880, or 13½ per cent of their total

<sup>1</sup> Report, 1884, pp. 29, 31.

<sup>2</sup> The question of through rates is closely allied with the problem of "empties." The most favorable condition for a low through rate would be that in which the cars are hauled loaded both ways; and the nearer this condition is reached, the more reasonably can the work be accomplished.

<sup>3</sup> Report, 1885, p. 31.

<sup>4</sup> Report, 1880, p. 3.

important industry, and the products of the dairy were shipped in the form of butter and cheese. The railroads appreciated and met the change by furnishing the proper facilities for the shipment of these products.

Aside from the influence of freight rates in modifying Iowa's industry, we must take into account the increase in wealth among the farmers, which enabled them to employ capital in various lines, and to undertake experiments with less hesitancy than before. Through their accumulations they had attained a strategic advantage in the adjustment of rates, and could make demands, rather than requests, of the railroads. Their patronage had come to be an item worthy of consideration.

But the industrial change was concerned not alone with farm products. In manufacturing and mercantile pursuits, the State developed wonderfully during the ten years, 1875-1885. Whereas formerly the jobbing centres had been located at Chicago, St. Louis, and New York, which had supplied Iowa with her manufactured products, wholesale houses were now established upon Iowa soil, and, through special rates secured from the roads, had been enabled to compete successfully with the metropolitan dealers for business among the Iowa people. Manufacturing centres had sprung up in Iowa, with which the wholesalers did a large portion of their business.<sup>1</sup> The manufacturers and wholesalers did not occupy the independent position which the farmer had

<sup>1</sup> Manufactures in Iowa.

	1870.	1880.
Number of Establishments . . . . .	6,566	6,921
Capital . . . . .	\$22,420,183	\$33,987,886
Value Merchandise . . . . .	27,682,096	48,704,311
Value Products . . . . .	46,534,322	71,045,926

We have now to notice what effect the transportation industry had in modifying Iowa's industrial condition.

With the settlement of Iowa, the people had turned their attention to agriculture as furnishing them the most immediate and most fruitful return upon their investment. Capital was scarce, and it was necessary for the farmers to dispose of their produce at once. The call for transportation facilities was urgent, and the tonnage in agricultural products heavy. But it grew evident early in the eighties that this state of things could not last. The cultivation of wheat was falling off in almost all sections of the State as a result of natural conditions. Moreover, the railroads had opened up the Dakotas; and Iowa was obliged to give way to wheat raised on fresh lands, and hurried to Eastern markets through the impetus of low rates. A change in the character of industry almost invariably comes when the margin of transportation pushes beyond a community. Corn was the greatest staple of Iowa, and best adapted to the soil; but transportation rates formed too large a per cent of its value to permit of its being shipped in large quantities. It was to the farmer's interest to put his products into the form in which freight rates would bear the least proportion to value. Iowa furnished, in its unsurpassed grazing-lands, excellent facilities for the raising of live-stock; and corn, condensed into the form of hogs and cattle, came to constitute a large proportion of Iowa's tonnage. Dairying had come to be an

value of domestic exports from 1871 to 1881, consisting chiefly in the products of the Western and Northwestern states, a large proportion of which was transported by railroad to the coast. This increase has gone hand in hand with a fall of 39½ per cent in railroad rates.

important industry, and the products of the dairy were shipped in the form of butter and cheese. The railroads appreciated and met the change by furnishing the proper facilities for the shipment of these products.

Aside from the influence of freight rates in modifying Iowa's industry, we must take into account the increase in wealth among the farmers, which enabled them to employ capital in various lines, and to undertake experiments with less hesitancy than before. Through their accumulations they had attained a strategic advantage in the adjustment of rates, and could make demands, rather than requests, of the railroads. Their patronage had come to be an item worthy of consideration.

But the industrial change was concerned not alone with farm products. In manufacturing and mercantile pursuits, the State developed wonderfully during the ten years, 1875–1885. Whereas formerly the jobbing centres had been located at Chicago, St. Louis, and New York, which had supplied Iowa with her manufactured products, wholesale houses were now established upon Iowa soil, and, through special rates secured from the roads, had been enabled to compete successfully with the metropolitan dealers for business among the Iowa people. Manufacturing centres had sprung up in Iowa, with which the wholesalers did a large portion of their business.<sup>1</sup> The manufacturers and wholesalers did not occupy the independent position which the farmer had

<sup>1</sup> Manufactures in Iowa.

	1870.	1880.
Number of Establishments . . . . .	6,566	6,921
Capital . . . . .	\$22,420,183	\$33,987,886
Value Merchandise . . . . .	27,682,096	48,704,311
Value Products . . . . .	46,534,322	71,045,928

succeeded in attaining. They were obliged to establish themselves at great expense in certain centres, and were then entirely at the mercy of the roads in the matter of rates. The farmers were indirectly affected, for they furnished the manufacturers with a large part of their raw material; but the agricultural industry *per se* was gradually shaking off the chains of railroad domination.

The railroad question in Iowa, then, had materially changed. Its concern now was to build up the manufacturing and wholesale centres, and to ship goods into and within the State, as well as out.<sup>1</sup> Complaints of discrimination, which were almost unknown during the seventies, were now to be heard on all sides.

From Report for 1884, p. 76. Reports from 22 towns.

Number of Wholesale Houses . . . . .	399
Capital . . . . .	\$22,704,505
Sales . . . . .	68,393,500
Net Increase in Business over '83 . . . . .	5,119,330

<sup>1</sup> It is impossible to secure classified tonnage before 1878, but the Table appended will sufficiently answer the purpose in showing the modifications that were going on in Iowa industry:—

TABLE OF CLASSIFIED IOWA TONNAGE.—PERCENTAGES.

ARTICLE.	1878.	1880.	1882.	1885.	1887.
Grain . . . . .	31	28.4	25.29	25.20	21.3
Flour . . . . .	5	3.9	2.04	4.03	2.4
Provisions . . . . .	1	1.9	1.18	1.63	1.8
Animals . . . . .	8	8.6	10.03	8.63	8.2
Other Agricultural Products . . . . .	1	1.8	1.65	2.25	4.1
Lumber and Forests . . . . .	18	13.2	15.87	10.63	12.6
Coal . . . . .	10	10.2	18.07	26.03	25.5
Salt and Lime . . . . .	1	2.1	2.24	2.45	2.2
Oil . . . . .		0.5	0.33	0.42	0.6
Iron and Steel . . . . .	2	6.8	1.43	2.46	2.9
Stone and Brick . . . . .	2	1.4	2.13	2.00	2.1
Manufactured Articles . . . . .	1	4.9	1.12	2.06	2.1
Merchandise and Non-enumerated .	20	16.3	18.62	12.21	14.2

These statistics are taken from the Commissioner's Reports. They are merely estimates, and make no pretence to exactness.

**CHAPTER II.****DISCRIMINATION.**

IN their first annual report,<sup>1</sup> in referring to an alleged increase of rates by the companies, the Board pledged itself, in the following words, to oppose discrimination : —

“The rapidly increasing commerce of Iowa demands every practicable agency for transportation and exchanges, and any attempt by discrimination to unjustly or oppressively interfere with or prevent the products of the State from seeking any market desired, or in any improper way to divert, limit, or repress the business of exchanges, will arouse the indignation of the people. The railroad corporations of Iowa can hardly afford to challenge the suspicion of discriminating against any portion of the State or people, much less the actual fact. Any attempt to discriminate against the commercial and producing interests of any section or any industry, should be jealously watched and guarded against, and will command the prompt action of the Commissioners whenever their attention is called to it in the manner contemplated by law.”

The law establishing the Board of Railroad Commissioners prohibited unjust discrimination, while it permitted just discrimination, leaving the determination of the justice or injustice of the charge largely in the hands of the Board. Very early in its history, the Commission took the position that just discrimination

<sup>1</sup> Page 76.

was entirely proper and should be allowed. It appears in the freight classifications of the railroads. Goods that are of high value are discriminated against, and made to pay a much higher rate than low-class commodities,—not because the cost of transportation is greater, though something should be perhaps charged for the greater risk, but because the traffic will bear a higher rate. This form of discrimination is everywhere recognized as entirely just. So, also, the Commissioners argued that discriminating rates should be made in favor of competitive points. It might seem to the non-competitive points unjust; but this was the railroad's only means of securing business at this point, and if any profit was made on competitive business, it would accrue to the benefit of non-competitive points through a lowering of rates. If obliged to carry all the business at the rates granted the competitive point, the railroad would be compelled to abandon the competitive business entirely. The Board, however, did not at all times unanimously maintain this position.

In the sixth annual report,<sup>1</sup> Major Anderson, one of the members of the Board, argued against the high rates at non-competitive points. He said:—

“It is safe to say that the railway manager is carrying freight to and from competing points on business principles, and that he is charging, at least, a reasonable compensation for his services; and from this standpoint it is manifestly unjust to permit him to charge a greater rate from non-competing points on the same line, to the same destination for a less distance. . . . The building up and developing of the twenty-five towns or stations at the expense of the nine hundred and seventy-five remaining towns

<sup>1</sup> Report, 1883, p. 61.

or stations in the State, under this system of discrimination, is a work so palpably wrong on its face, and so in contravention of the principle that demands the greatest good to the greatest number in the establishment of laws and public policies, that it needs only to be stated to be condemned."

Commissioner Coffin, in the same report, arrived at the same conclusion, though by a somewhat different line of reasoning. The railroads have been built and should be operated for the public good. The producers of the State are in great measure the public. An implied contract was made when the right of eminent domain was given the railroads, money voted, and grant of lands made, that all should have fair and equal facilities. The mass of the producing classes are best accommodated by a multiplicity of convenient trading-towns, and these should be untouched by the arbitrary rulings of common carriers.

Yet on the whole the Board argued for the perfect justice of discrimination in certain cases. They declared<sup>1</sup> that either competition must exist, or there must be absolute equality of rates. Unrestricted competition had, of course, proved deceptive and disappointing. They argued, however, that "with just so little restriction as is absolutely necessary to correct evils resulting from competition run mad, competition becomes the great regulator, and a blessing instead of a curse. . . . Discriminations, if unjust, should be prohibited or punished. Undue preference of persons should also be prohibited and punished, and all artificial advantages given one place over another should be regarded as violations of the just law which should govern carriers.

<sup>1</sup> Report, 1886, p. 33.

And yet, because it is essential to the proper conduct of business, there may be discriminations which are not unjust; natural advantages will be found accruing to some towns, while they are wanting to others, and these inequalities must be regarded as necessary and always to be found where there is healthy competition. . . . Good results will be found from adjustment and harmony, and through the application of old rules to new facts, rather than from an abandonment of old rules and principles of business."

The Commissioner's view is open to serious criticism. The author is not at all sure that the principle which underlies the classification of goods is a form of discrimination. The goods are rated according to their ability to pay, the theory which underlies our present form of taxation. They are classified according to their value, and it is very questionable whether this practice can be used to bolster up a system of reckless discriminations at terminal points. The practice of granting special rates to competitive points is wrong in principle. It is at least doubtful whether the growth of cities, and the concentration of business at a few points, is necessary to the industrial prosperity of a State. It is natural that a State commission should advocate discriminating rates, if it feels that such a policy will advance the prosperity of the people which it serves; but we must decide the question upon broader lines. Is a policy which leads to the enrichment and advancement of a few places at the expense of the many productive of benefit to the people as a whole? Without going into the theoretical discussion, it is sufficient to lay down the proposition here that it is out of harmony with rational industrial

progress to allow artificial transportation facilities to build up manufacturing centres and to determine the currents of trade. In general, rates which have a decentralizing and segregating tendency are economically to be preferred. While building up business at competitive points and increasing their net earnings, the railroads are in many cases destroying business at non-competitive points. The effect of rates upon the public at large must be taken into account in determining their reasonableness and justice.

Upon practically the same grounds the Commission abandoned the theory that States should prohibit higher rates for shorter than for longer distances.<sup>1</sup> They asserted that it would compel an abandonment of through traffic, and the devoting of attention entirely to local traffic, with enhanced local rates to cover the loss occasioned by the abandonment of the competitive business. It is plain, that, to a State in Iowa's situation, such a condition of things, if true, could meet with no favor. It was claimed by the opponents of the long and short haul principle, that, if the roads were required to charge as much for the long as for the short haul, they would raise their rates on the long haul, rather than lower them on the short haul. This suggests the establishment of a tribunal which should exercise a proper and effectual control over rates, and prevent inequalities of this kind. It is not an argument against the long and short haul principle.

Cases illustrative of the position of the Commission upon the question of discrimination are here presented.

Ten cases of discrimination in matters of classifica-

<sup>1</sup> Report, 1880, p. 179.

tion were reported during the history of the advisory commission. A complaint was entered in 1880,<sup>1</sup> in which the railroad favored shippers on its own line to the injury of others, justifying it upon the ground that it was due to the wholesale towns on its line, which had helped build up the road and which were virtually interested in it, that they should be protected as against competitive points on other roads, and between which there could be no community of interest. To this argument the Commissioners replied as follows: "We are unable to believe that the several towns in this State need protection, one from the other; and even if this be not true, it is, we think, unsafe to leave the right of determining the necessity to a railroad company, whose duties to the public seem to be that of a public carrier of goods and passengers alone. If any such necessity ever exists, which we do not now discuss, the General Assembly of the State alone should, in our judgment, determine the fact and devise the remedy." They therefore recommended that the discrimination be removed, and their recommendation was complied with.

Under the head of discrimination proper, seventy-one cases were reported by the advisory commission. A case of alleged discrimination, involving a demand for a *pro rata* rate, was filed Aug. 26, 1882.<sup>2</sup> Complaint was entered by the Rand Lumber Company of Burlington, Ia., against the Chicago, Burlington, and Quincy, for charging the same rate for lumber — 12½ cents per cwt. — from Keokuk, Montrose, and Fort Madison to Char-

<sup>1</sup> Report, 1880, p. 23, John T. Hancock & Sons, vs. B., C. R., & N. Ry.

<sup>2</sup> Report, 1882, p. 550.

ton, Ia., as was charged from Burlington to Chariton, and that the same rate was charged all points west as far as the Missouri River from the points mentioned. They also complained that Burlington, being nearer Chariton than the other points, should be charged less, and should derive some advantages from its geographical position. The railroad company, in fixing its rate from the Mississippi to the Missouri, had taken into account cost rather than distance. Lumber was furnished from the north by means of the river, and the cost of the lumber to the southern towns was greater than to those above. This difference was made up by giving the southern towns lower rates to the Missouri. The railroad companies endeavored to arrange rates in such a way as to enable lumbermen all along the Mississippi to compete with one another. The Commissioners say: "To a great extent, a railroad company must protect the business on its lines in competition with like business conducted on rival lines under more favorable circumstances, or it loses that particular business. The Railroad Commissioners do not think it is their duty to so interfere as to destroy business so helped by a railroad company at its own expense, for the purpose of adding that business to another locality."

With regard to a *pro rata* rate, a demand for which is impliedly contained in the complaint, the Commissioners say: "If this rule should govern in the shipment of lumber, it should also in all other freight; and yet, outside of wool, butter, and possibly some other forms of agricultural productions, there is nothing from the soil of Iowa that under a *pro rata* rate would bear transportation to the Atlantic cities. The principle underlying

the complaint, the Commissioners think, would be fatal to almost every Iowa interest; and if they are correct in their information, few interests would suffer more than the lumber manufacturers."

That the Board recognized the element of cost of service, as entering into transportation charges, is shown in a decision rendered May 11, 1882.<sup>1</sup> In this case the plaintiff resided at Waukon, at the terminus of a narrow-gauge branch of the Chicago, Milwaukee, and St. Paul road. New Albin and Lansing are both situated on the main line, the former five miles farther, and the latter five miles nearer to Chicago than Waukon. The plaintiff charged the company with discrimination against Waukon, in charging 4 cents more per 100 lbs. than was charged from either of the other places. The Commissioners, taking into account the small amount of business on the narrow-gauge line, cost of break of bulk and transfer at the junction, and the grade of six hundred feet on the branch line, held that the additional charge of 4 cents per 100 lbs. was not unjust discrimination.

On Dec. 8, 1885,<sup>2</sup> the Fowler Company of Waterloo, Ia., entered complaint against the Illinois Central Railway Company, charging it with fixing a rate upon apples from Chicago to Le Mars of 25 cents per cwt., and from Chicago to Remsen, ten miles nearer to Chicago, of 37 cents. It was a case of a greater charge for a shorter than for a longer haul on the same line and in the same direction without the apparent intervention of either

<sup>1</sup> Report, 1882, p. 484, *Albert Rosa vs. C., M., & St. P.* See also Report, 1884, p. 559.

<sup>2</sup> Report, 1886, p. 434.

competing rail or water routes. Such a discrimination, though not prohibited directly by the Iowa law, was indirectly legislated against in Sect. 11, which prohibited a railroad from charging "more for transporting freight from any point on its line, than a fair and just proportion of the price it charges for the same kind of freight transported from any other point." General Manager Jeffery of the Illinois Central justified the discrimination on the ground that shipments were being made to Le Mars from Missouri, Kansas, and Southern points at low rates, and the Central was obliged either to meet the rate or give up the business. Discussing the long and short haul proposition, Mr. Jeffery said:—

"Theoretically and logically the proposition is a good one, and commends itself at first sight to every thinking mind: practically, diversity of transportation interests; the competition of different and widely separated territories; of communities and manufactories more or less remote from one another, but reaching common markets; the effect of competition by river, lake, and ocean,—all at present prevent the practical application of that which seems at first thought so logical and just. . . . Our transportation, like all other of our interests, is in a state of transition. The time may come when a dense population, large and numerous commercial centres, active, convenient, and numerous local markets, greater home consumption of the products of the soil, will enable the much lauded and vigorously supported transportation proposition first herein cited to obtain."

The case being an interesting one and in some particulars unique, the Board asked the opinion of President Perkins of the Chicago, Burlington, and Quincy upon the question at issue. Among the things which Mr. Perkins said in reply, the following may be quoted:—

"There is no philosophy in the rule that no greater charge shall be made for a given haul than for a longer one. Circumstances frequently arise, as I have stated, when it is necessary for railroads, as well as for others who carry on business, to retire from the field or to sell certain of their goods at prices which pay no profit, or perhaps involve a loss; but because they do so in some cases, rather than retire from the field, this constitutes no good reason why they should arbitrarily be compelled by law or public opinion to do so in other cases, where the same necessity does not exist. The more or less prevalent belief in the soundness of the rule referred to grows out of the fallacy that cost with a reasonable margin of profit is in every case to be taken as the absolute measure of the price of transportation; while the truth is, as I have endeavored to point out, that it is often necessary for all traders, including railroads, to reduce the price by giving away a part or the whole of the profit and sometimes part of the actual cost."

The case was settled before the Board was called to pass upon it. Therefore no decision was rendered; but it can perhaps be inferred from their previous decisions in similar cases, and from the remarks upon this case which follow, that the Board would have sustained the Illinois Central in its position:—

"There was an apparent absence of competing rail or water routes. There was a great advantage to Le Mars in the rate giving it the choice of Northern or Southern apples. There was a gain of revenues to the Illinois Central Company. Remsen was not charged more than the ordinary and usual rate. Le Mars, by reason of peculiar circumstances, was charged less than the usual and ordinary rate. The only reason given for the charge was that thereby Le Mars and the Illinois Central Railway Company were benefited. There may have been fruit dealers in Remsen who were hurt thereby, but they were not parties to the complaint. Indirectly the fruit growers who raised the Southern apples may have been hurt by being artificially brought

into competition with growers of Northern apples, but they were not parties to the complaint. Every one sees the unjust character of a less charge for a long haul in the abstract; but extenuating circumstances are always pleaded for the purpose of making the case under investigation an exceptional one, until one almost feels that the advocates of changing conditions wish to state the rule as a good one in theory, but useless in practice."

A complaint was filed with the Board Oct. 5, 1882, by the township trustees of Red Oak, Montgomery County, against the Chicago, Burlington, and Quincy,<sup>1</sup> charging the latter with entering into a written agreement with certain grain-buyers who possessed elevator facilities and to whom special rates were given. The Board saw no reason why an individual who did not own an elevator should pay more for transportation, providing he loaded without delay. They recommended "that like charges be made when not less than full car-load lots are offered at the same station, and if any concessions or drawbacks be given, they should be open to all shippers offering freight of the same kind, in the same class, in the same line of business." But the length of time a car stands idle would be a reason why rates might vary.

An interesting example of the way in which interstate commerce interferes to derange rates was shown in a decision rendered by the Commission, Jan. 19, 1883.<sup>2</sup> The Chicago and Northwestern had made a rate on lumber from Winona, Minnesota, to Webster City at 12 cents per 100 lbs.; and to protect the Du-

<sup>1</sup> Report, 1882, p. 554. See also Report, 1883, p. 705, and Report, 1884, p. 525.

<sup>2</sup> Report, 1882, p. 564.

buque lumber interests, the Illinois Central was obliged to reduce its Webster City rate to 10 cents. It did not, however, alter rates at the intervening points; and a dealer at Alden, twenty-five miles nearer Dubuque, whose rate was 14 cents, complained of discrimination. It was a difficult case. The Commissioners had no control over the Northwestern rate, as this was an interstate shipment. If they obliged the Illinois Central to reduce its rates all along the line in proportion, the railroad was punished for maintaining an Iowa industry. They solved the difficulty by recommending that the Illinois Central gradually reduce its rates east of Webster City, not as low as the competitive rates, but low enough to prevent the alienation of business from these towns to the competing point.

Apropos of the cut rates that prevailed during the summer of 1882, the Board wrote a letter to a firm in Knoxville which had complained that the interstate rates to Des Moines had been made so low that neither the Chicago, Burlington, and Quincy, nor the Chicago, Rock Island, and Pacific could compete with them. The Commissioners insisted that such an evil could only be prevented by the establishment of minimum rates. While recognizing that they had no power over interstate business, the Commissioners "do not hesitate, however, to remonstrate with the railroad company that charges too much on interstate hauls, and are usually successful; but it is a startling proposition to demand an increase — the only thing that would bring relief in this case. . . . Your complaint admonishes us that the volume of Iowa business has brought West the evils that affect merchants in the East, calling loudly for the

interference both of State and Federal power, the one relative to local, the other to interstate, commerce."

On April 29, 1886, the Commissioners received from Governor Larrabee correspondence which had been carried on between the Union Pacific Railway through its president, Honorable C. F. Adams, Jr., and the mayor of Council Bluffs, relative to grievances under which this city was suffering, with a request to take such action as they deemed proper.<sup>1</sup> About the same time, a request was received by the Commissioners from the Citizens' Committee of Council Bluffs, requesting a hearing for their grievances against the Union Pacific. An investigation was held lasting ten days, and giving the greatest opportunity possible for the hearing of all manner of complaints. The main cause of complaint was the apparent determination of the Union Pacific to make Omaha, and not Council Bluffs, its eastern terminus. It was evidenced that the Union Pacific had leased ground in Council Bluffs for a term of ten years from 1878, for the erection of stockyards, and that a profitable business was established; that in 1879 the lessees and others associated with them removed their stockyards to Omaha, and failed to maintain suitable ones at Council Bluffs, and that by neglect and wrongful treatment the shippers had been obliged to abandon the use of the Council Bluffs yards. The Commissioners held that the Company was censurable in not cancelling the lease in Council Bluffs, and making a new one, so that the Council Bluffs yards might be kept in order, and be made a competitor in the business; and they made a recommendation in accordance with this opinion. As to the other

<sup>1</sup> Report, 1886, p. 530.

complaints, that the company failed to run a caboose on freight-trains from Omaha to Council Bluffs; that the crews were changed at Omaha, and the bridge across the river operated as a division; that Council Bluffs did not receive the repair-shops to which it was entitled; that rebates were allowed to Omaha merchants and jobbers, not allowed to merchants and jobbers of Council Bluffs, and freight charges were lower; that freight was re-billed at Omaha; that the company had narrowed the channel of the Missouri River; that it had discouraged its employees from residing at Council Bluffs, and required them to reside at Omaha,—the Commissioners found no cause for complaint. They recommended the increase of depot facilities at Council Bluffs, removal of all cause of complaint as to the omission of Council Bluffs from the time-cards of the company, and that all trains, whether local or through, that extended as far east as the Missouri River, should start from Council Bluffs.

Another form of discrimination with which the Commission was called upon to deal was that of car-distribution. Very soon after the organization of the Board, on May 17, 1878,<sup>1</sup> the Commissioners were called upon to determine whether a contract was legal which had been entered into by the Central Railroad of Iowa, and the Consolidation Coal Company, the fourth clause of which was as follows:—

“As to the point of protection of the coal company against the unreasonable, undesirable opposition of small and desultory miners, the railroad company agrees that it will not extend any rate to them below those now existing, and will generally encour-

<sup>1</sup> First Annual Report, p. 20.

age and protect the Consolidation Coal Company where such action will not conflict with existing laws, the consideration being that the coal company furnishes at all times all the coal demanded."

The Board did not hesitate to denounce the contract as illegal and contrary to public policy, regarding the fourth clause as particularly reprehensible. In the course of their decision they undertook to answer the question of the Central Iowa receiver as to what rule should govern in the distribution of cars for the coal-trade, so that exact justice might be done to all concerned.

"Whenever able to do so, every railroad company should have cars sufficient for the transaction of the ordinary business of the road. If at certain seasons of the year there is, as in the coal-trade, a great demand for cars of a certain character, it is the duty of the railroad company to have a sufficient number of cars to supply the ordinary demand. . . . An extraordinary demand at stations and by shippers resulting from a periodical influx of business should be met by a *pro rata* distribution of cars, and this should be made both as to stations and shippers."

The Report of the Board for 1882 contained a number of cases of discrimination in car-distribution which occurred in the early months of 1881, among them being one against the Central Railway of Iowa,<sup>1</sup> which had been complained of in 1878. The complaint in this case was similar to the original one. The railroad was charged with favoring two coal companies, to the detriment of smaller and less influential concerns. The Board promptly adjudged this illegal discrimination, and ordered a compliance with the law.

These decisions lead us naturally to a brief considera-

<sup>1</sup> Report, 1881, p. 130.

tion of the coal problem as it presented itself in Iowa.<sup>1</sup> The problem has been found very difficult of solution, owing to the fact that the responsibility for the lack of cars is a divided one. Northwestern Iowa, in fully one-third of its area, consists of prairie land. There are no coal-fields or woodlands in the immediate vicinity, and the territory is poorly supplied with transportation facilities. Inasmuch as the section depends entirely upon the railroads for its supplies of fuel, it is evident that any interruption in transportation must seriously interfere with convenience and comfort. The winters of 1880-1881 and 1881-1882 proved long and very severe. They had been preceded for several years by mild winters, in which the demand for fuel had been comparatively small, so that neither mining nor railway corporations were prepared for the change. The people suffered intensely. Fences, sheds, growing groves, and even corn and hay, were used for fuel. In many cases the lack of fuel necessitated the closing of the schools. Naturally the complaints were many and loud. A careful investigation during both these winters by the Commissioners plainly proved that the railroads were not entirely responsible for the unfortunate state of affairs. During the summer months, the demand for coal had been slight. As a consequence, miners were discharged, became scattered, and were difficult to collect on a moment's notice. The demand for coal came from every quarter at once, and completely overwhelmed the mining companies, who were quite unable to fill their orders. The difficulty was enhanced by strikes among

<sup>1</sup> For complete discussion, see Report, 1880, Appendix, pp. 571-589; also Report, 1881, pp. 146-160.

the miners, who saw an opportunity for higher wages in the unusual demand for coal. The report of the State Mine Inspector showed the presence in the State of four hundred fifty-seven operating coal-mines, the entire output being estimated at three million five hundred thousand tons. The Inspector stated that, when worked to their full capacity, all the mines in the State were insufficient to meet the unusual demands during a cold October, November, and December. Plainly, then, the railroads were to some extent relieved from responsibility. The mining companies could have advantageously employed the summer months in opening up new beds and preparing for the winter's demand. Much of the difficulty might also have been removed, and the mines have been kept busy during the greater portion of the year, if the people, especially manufacturing companies, school boards, and the like, had made their purchases during the summer. The railroads should have stocked up their bins along their lines at this time, instead of aggravating the evil, by sending in their orders late in the fall. There would then have been no reason for confiscating coal in its passage to private parties, an act which has been defended by the assertion that the moving of trains is a public necessity. But coming to the question with which we are more directly concerned, the lack of coal-cars. Various excuses were given by the railroads for their apparent culpability. Some claimed that the cars were sufficient to handle the trade, but that the mines were insufficiently worked. Others admitted that the transportation business had increased beyond their expectation, that they had placed orders with the car factories, that the facto-

ries were far behind in their orders. To the charge that the railroads were employing their coal-cars to assist them in building new lines, rather than reserving them for their intended purpose, the companies replied, that, in building new lines, they were benefiting a people who had no railway facilities for coal or anything else.

Manifestly, however, it was in this particular that the roads were culpable. The law reads, Sect. 10, that it is "the duty of any railroad corporation, when within their power to do so and upon reasonable notice, to furnish suitable cars to any and all persons who may apply therefor for the transportation of any and all kinds of freight, and to receive and transport such freight with all reasonable despatch, and to provide and keep suitable facilities for the receiving and handling of the same at any depot on the line of its road." However necessary and important the construction of new lines might be to the railroads, there was no justification for the employment of coal-cars for this purpose up to the very verge of winter, when the demand for them was likely to be great. The Commissioners, at the conclusion of the investigation, ordered the railroads to furnish suitable cars to all applicants, concluding as follows: "The laws of the State relating to the control of railways enjoin managers to operate their roads for the comfort, convenience, and accommodation of the public. The prompt and timely movement of coal is so necessary to the comfort of the people, that any dereliction by the railways will surely and justly challenge the most vigorous criticism."<sup>1</sup> That the railroads paid but little heed to the recommendations of the Commission is evidenced by

<sup>1</sup> Report, 1881, p. 160.

the discussion of the subject in substantially the same form in the Report for 1887. The lack of cars at this time was due, in great measure, to the unusual demand for facilities for hay shipment; but the coal problem commanded its share of attention. The Board presented for the consideration of the public sixty specific cases of complaint due to shortage of cars, and many of these were in the form of petitions signed by several hundred complainants.<sup>1</sup> In addition to these, numerous verbal complaints were made to members of the Board. The distress was very great in the northwestern part of the State, and the losses severe. The crops in this section had been unusually good; and an immense amount of hay was baled to supply other sections of the State, that had suffered from drouth. The majority of the farmers had no facilities for protecting their hay. Cars were not furnished in sufficient quantities, the crop was necessarily exposed to the weather, and great quantities of hay were spoiled. Similar complaints were made by shippers of grain. While the railroads were partially excusable, in the blockades due to heavy snowstorms, and in the fact that storage-room in the Eastern cities was insufficient, making it necessary to detain the cars in the East, yet the railroads did not furnish rolling-stock in proper ratio to the increased mileage of their lines. The suffering was so severe as to cause the passage on Feb. 1, 1888, of a joint resolution by the Twenty-second General Assembly as follows:—

“Whereas, Great inconvenience, expense, loss, and distress now exist in northwestern Iowa by reason of the failure and refusal of the railroad companies to furnish at all shipping-points

<sup>1</sup> Report, 1887, pp. 791-810.

in the northwestern part of the State, cars sufficient and necessary to transport to market the products of the country now awaiting shipment; therefore,

*"Be it resolved, That the Railroad Commissioners of Iowa are hereby requested to immediately demand of all railroad companies operating roads in northwestern Iowa to at once and without delay furnish sufficient cars to relieve the present urgent demand therefor, and in case of non-compliance that the Commissioners cause suit to be brought for such discrimination and failure to furnish cars."*

A new country, rapidly developing, needs a continually increasing quantity of rolling-stock to meet ordinary demand, and with extension of lines into new territory the demand becomes still more imperative. The Commissioners in this case did all in their power to relieve the distress. The railroads should have provided against any such contingency. The Commissioners were of the opinion "that all the losses occasioned by the failure to furnish adequate transportation should not be borne by the producer and shipper; that the carrier who undertakes to provide the necessary facilities should be held to a strict account for failures that reasonable foresight could have guarded against." They maintained that the railroad was the servant of the people and the creature of the State; that the railroad conserved its best interest when it met the demands of citizens.

The stand taken by the Commission upon the wholesale principle and the car-load rate was in line with their position on similar questions. Because the jobbing business had thriven under rates which were special and which discriminated against non-competitive sections was but poor reason for their continuance. The Commissioners took the position that the prosperity of the whole-

sale centres contributed directly to the prosperity of the entire State in furnishing home markets for finished products, and in encouraging the establishment of manufacturing concerns which should absorb the raw materials produced in the State. Those who opposed the special rates, on the other hand, argued that the depression occasioned at non-competitive points more than offset the advantages which the State enjoyed through the building up of manufacturing and jobbing centres. By the terms of Sect. 11 of the law, it was provided that "all concessions of rates, drawbacks, and contracts for special rates shall be open to and allowed to all persons, companies, and corporations alike at the same rate per ton per mile by car-load upon like conditions and under similar circumstances, unless by reason of the extra cost of transportation per car-load from a different point the same would be unreasonable and inequitable." It was contended by parties to a case<sup>1</sup> in the first year of the Board's history that the legislature had fixed the car-load per ton per mile as the unit of shipment; that the wholesale principle which applied in commercial dealings could not be applied to the transportation business; that a man shipping one car-load should have the same rate as the man shipping ten or one hundred, the shipment being from the same place to the same destination; that the only condition which could change the basis of calculation was the "extra cost of transportation from a different point." The Commissioners admitted that this interpretation might be placed upon the law; but that, if this were the intention of the Legislature, they should have expressed their ideas in language which

<sup>1</sup> First Annual Report, p. 26.

was unambiguous. They interpreted the law to mean that there should be no discrimination as between two wholesale or between two retail dealers, but that the general business rules which govern the world in all other relations should also govern the railroad companies in their relations to the public. The arrangement and distribution of cars could be affected much more advantageously and economically if the shipments were massed, than if they were scattered. In a case filed Jan. 9, 1882,<sup>1</sup> the Board laid down the principle that "all small or parcel freight is properly chargeable at a higher proportionate rate than larger quantities; and it is held by the courts everywhere and by the rule of all transportation companies, that a *pro rata* proportion of a large shipment for small parcels, especially when weighing less than 100 lbs., would be an injustice to the corporation."

The Board was called upon in July 17, 1883,<sup>2</sup> to express directly its opinion upon the question as to whether the car-load should constitute the unit for all shipments. The complainants were dissatisfied with the discrimination made at Des Moines between wholesale and retail dealers, and with the action of the Central Iowa Traffic Association, which classed them simply as retail dealers, while their competitor was both a wholesale and retail dealer, and thereby secured wholesale rates. They argued that, with the same concessions in matter of rates, they could do as large a business, and that the discrimination tended to keep

<sup>1</sup> W. F. Knowles vs. Illinois Central, Report, 1882, p. 450.

<sup>2</sup> Merrill & Keeney vs. C. & N. W. and C., M., & St. P., Report, 1883, p. 678.

them always retail dealers. With the same freight rates they would also become wholesale dealers. The question, when divested of all verbiage, merely amounted to the issue as to whether the car-load should be the unit for fixing rates, independent of the quantity shipped. Though the Commission had several times discussed Sect. 11 of the law, this was the first time they had been called to pass upon it judicially. They admitted, as an abstract proposition, "that a railway company, during a fixed period, between the same points, could as cheaply transport one thousand loaded cars for one thousand persons, as for one person." But it was to the special rates that Iowa owed the growth of its jobbing-trade, which then amounted to about \$50,000,000 (1882). And the Commissioners did not feel it their duty to interfere in such manner as to crush it out, though they might be acting in violation of correct economic principles. They claimed that the effect of the interference would be to increase the rate to the jobber, not to decrease the rate to the retail dealer. They therefore refused to recommend a discontinuance of the jobbers' rates, although satisfied that, if they should recommend such action, the railways would be only too willing to comply. A dissenting opinion was offered by Commissioner Anderson, in which he maintained the position that the car-load should be the unit. If this rule was not followed, the strong would be encouraged at the expense of the weak; and it would be only a question of time when the survival of the strongest would be accomplished, and "monopoly most hateful and hurtful to everybody save its proprietors finally established amidst the wreck of the small-fisted dealers,

who did not do business sufficient to secure the cheap rate. . . . And if, in placing proper limitation on discrimination between wholesale and retail dealers in their shipment of freight over the railways of the State, harm comes to the jobbing interest of Des Moines and other Iowa points by reason of the railways withdrawing their special rates from the favored few, rather than extending it to the many who are entitled thereto under the operation of this just and proper limitation, the responsibility for that harm will be with the railway companies, and not with the Commissioners.”<sup>1</sup>

This decision stirred up a great amount of opposition, for those “whose occupation it is to manufacture public sentiment”<sup>2</sup> had no difficulty in making a large portion of the people believe that this left the way open for unjust discrimination on a large scale. The Chicago jobbers who were interested in securing the Iowa trade joined with the alarmists of the State; and the railroads, finding the opposition to jobbers’ rates strong in both States, abolished them. The Board declared that “the situation has been forced by the unwise and thoughtless clamorings of men who had no real interest in the question, and whose only object seemed to be to give themselves a little notoriety.”

This action of the roads drew from the Board a general discussion of the wholesale and retail question as applicable to railroad transportation.<sup>3</sup> They could not agree that under Sect. 11 any variance whatever from

<sup>1</sup> For testimony favoring application of wholesale principle, see Cullom Committee report on interstate commerce. Session at Des Moines, vol. ii., pp. 952-957, 971, 981, 983, 1005. In opposition see vol. ii., pp. 1035, 1050, 1072, 1073.

<sup>2</sup> Report, 1884, p. 69.

<sup>3</sup> Report, 1884, p. 71.

a uniform car-load rate was in violation of the law. "It cannot be successfully maintained that in Iowa the absolute, uniform, unvarying unit of transportation is the car-load." The prohibition placed upon *unjust* discrimination implies that such a thing as *just* discrimination is possible. The Board followed to its logical conclusion the principle of the absolute prohibition of all discrimination. The law, they said, to be consistent, should not logically stop with the car-load as a unit, but should carry out the principle to the pound weight. All classification of freight would be done away with. Jobbing centres would disappear; articles, as a rule, would not bear long transportation; commerce would dwindle to small proportions, and would be confined almost entirely to localities. In short, we should have the return of mediæval conditions, and characteristics of trade and modern civilization would be done away with.

"The true question for consideration is not what will benefit the retail dealer, nor yet what will benefit the wholesale dealer, but rather what will benefit the masses. If by a given policy the people obtain articles which they need at cheaper rates, if at the same time large numbers of people are brought remunerative employment, and if avenues for investment of capital are opened up within the State, and the wholesale and jobbing houses are transferred from Chicago and other points east and outside of the State, to points within her borders, it would seem to be wise to maintain such policy. To abandon it for the sake of doubtful profit to a class only of the people, even though as reputable and worthy a class as that of the retail dealers, would be to forget the benefit of all for the gain of a few persons making a single, and not a numerous, class of the people."

But the agitation on this subject did not stop with the abolition of the jobbers' rates. The jobbers of

Chicago and St. Louis were determined, if possible, to secure control of the Western trade, and started a crusade for the abolition of the car-load rate.<sup>1</sup> At a meeting of the Classification Committee of the railroads at Denver, in June, 1885, the abolition of this rate was only prevented by the earnest arguments of representatives from cities of the Northwest. At a meeting of the Joint Classification Committee at St. Paul, on Sept. 15, the matter was again brought up, and postponed until the meeting of Oct. 6, in Chicago. Meanwhile the Iowa jobbers, becoming alarmed, petitioned the active co-operation of the Board in preventing the change. The Board addressed a letter to the General Freight Agents' Joint Western Classification Association, in which they reiterated their well-known views upon the subject. They regarded it as a very vital question for Iowa; for they realized that agricultural growth had about reached its limit, and that people must now turn their attention to manufacturing and mercantile enterprises. An advance in this direction they considered impossible with the abolition of the car-load rate. They showed that it had been a settled policy of railroads, almost from their beginnings, to grant a concession to the car-load. They questioned the moral and legal right of the road to destroy the industries which in Iowa were the support, directly and indirectly, of nearly two hundred thousand people by abolishing a system upon which these industries had been built up. They argued that the effect of the abolition would be the introduction of special secret rates, with all their attendant evil consequences, and declared that, —

<sup>1</sup> Report, 1885, p. 46.

"If this proposed action should be taken, it appears to us so real a grievance, and such an unmeasured injury to the interests of the State, that we feel we can only show it forth to the General Assembly and to the people, as an accomplished act of gross injustice."

Again they say:—

"The whole question seems to involve the prosperity of the people of Iowa. It would seem that our ruin can only be accomplished by making the railroad business the only one known in which the question of wholesale rates for large transactions and long distances may never enter."<sup>1</sup>

At the October meeting of the Joint Classification Committee, the question of the abolition of the car-load rate was indefinitely postponed, much to the gratification of the jobbing centres of the Northwest.

At the time of the abolition of jobbers' rates, the Iowa Jobbers' and Manufacturers' Association of Des Moines drew up a resolution demanding their restoration. This resolution was forwarded to all the railroads concerned. Their replies, while perhaps not embodying the actual reason for the abolition of the rates, contained sound objections to their continuance.<sup>2</sup> Mr. H. C. Wicker, traffic manager of the Chicago and Northwestern Railway, declared "that the principle of a less price for a larger quantity' has always been recognized by this company, in common with all other Iowa railways, as just and equitable. . . . The joint action of all the roads interested in the transportation of freight from Chicago and the East, in withdrawing special rates last summer which had been granted prior to that time on

<sup>1</sup> Report, 1886, p. 31.

<sup>2</sup> Report, 1885, p. 535.

all classes of freight in large or small quantities to the jobbers at several points in Iowa, was taken, not as is charged in the resolution referred to, on the demand of the special jobbing interests of Chicago, but because of the unanimous sentiment of the representatives of all the roads interested, that the system of giving special rates to individuals was pernicious, and in the interest of the few against the many, and in favor of certain towns and localities to the detriment of others. This opinion, I am free to say, was originally held by a few only of the roads interested in Iowa traffic, when the practice of giving special rates to individual jobbers was inaugurated; but the abuses which had grown up under the system became so gross, that when the matter was taken up, and discussed from every point of view, in the meetings of last summer, there was not a dissenting voice against the proposition, which emanated from no one road in particular, for the entire withdrawal of all special rates to individuals. It was felt by the roads assembled that any concession of rates to the jobbing-trade should be made on *commodities and not to individuals*; that the roads could not attempt to decide who were jobbers and who were not; that, by making concessions to one firm who classed themselves as jobbers, because they employed one or more travelling salesmen to sell their goods, and refusing them to another firm doing a retail business, and receiving an equal, and in many cases a greater quantity of freight of one kind, we would be making an invidious distinction between individual merchants or firms, and lay ourselves liable to the charge of discrimination in its worst form."

The argument presented in this letter against the

further continuance of jobbers' rates is strong. The question of granting special rates for the building up of particular industries has already been discussed,<sup>1</sup> and the position maintained that they should in general be decentralizing in their tendency. The author would go a step farther than Mr. Wicker has gone, and apply the same line of reasoning to the car-load rate, maintaining the view which the Commission has regarded as so absurd.<sup>2</sup> The car-load rate, no more than the jobbers' rate, can be theoretically defended. Little can be said in favor of the cost of service theory. A rate must not fall so low as not to cover an estimated minimum cost; but this cost does not include the general expenses of operation, which must be distributed in some manner over the entire traffic of the road. To attempt to fix a rate on a particular commodity, in conformity with the entire cost of handling that commodity, is plainly impossible; but it is only on the cost of service theory that the car-load rate can be defended.

Moreover, as already stated in another connection, the railways ought not to favor large, at the expense of small, shippers. As a practical expedient, the establishment of the car-load as the unit of shipment may be justified, and the action of the Interstate and State Commissions sustained; but this policy has no theoretical defence. The small shipper should be given equal opportunity with the large shipper, even though this may render possible, if not probable, a great increase in parcel shipments, with resulting additional inconvenience and expense to the carrier.

<sup>1</sup> Page 66.

<sup>2</sup> *Ante*, p. 86.

**CHAPTER III.**

**POOLING.**

CLOSELY allied with the question of discrimination is that of pooling, of which the Board took a rather liberal view. When the Commission was instituted in April, 1878, there had been in existence for eight years an agreement between the Chicago and Northwestern, the Chicago, Rock Island, and Pacific, and the Chicago, Burlington, and Quincy, which was known as the Iowa Pool. This did not legislate concerning local traffic, but left that entirely to the individual roads. The profits of carriage for through business between terminal points were equally divided between the roads, after deducting 45 per cent for operating expenses in passenger, and 50 per cent in freight business. The Board took occasion in its first annual Report<sup>1</sup> to put itself upon record in favor of such pooling arrangements. It was detrimental to local interests to have the through rates low, and the loss, if any, made up on local business; and the pool seemed to them to be the means of compelling through business to bear its proportionate share of the expense of carriage. A dissolution of the pool, followed by open warfare, would be disastrous to Iowa's interests. The prediction of the Board as to the effect of a break in the pool proved true. During the summer of 1882, the roads composing the pool disagreed as to division of

<sup>1</sup> Page 48.

freight, and a destructive war of rates followed, participated in not only by the three roads interested, but by all of the Iowa roads. Many of them were drawn into it against their wishes, and were obliged to meet the rates of their competitors or lose their business. Complaints emanated very largely from non-competing points that suffered in competition with points which the pool reached. These complaints, however, contain no argument against the existence of pools, but a plea for a more careful and equitable adjustment of rates. With an agreement between roads which could be enforced, the facilities for the transaction of business would become more reliable, and a saving of cost in the management of the business would be effected. This was in general the position taken by the Board. They said, "Whatever the effect of pooling may be in the future, one thing is certain, that with all the pools, combinations, and consolidations that have been formed in the past twenty years, the result has been a gradual reduction of rates from the great grain and stock raising regions to the ultimate market."<sup>1</sup> That the pool does not entirely substantiate the claims made for it is true. Perfect stability of rates for any great length of time has never been secured, because there has been no tribunal which had the power to enforce the pooling contract.

The laws of Iowa, Sect. 1297, Code 1873, prohibit pooling upon State commerce, but, of course, have no control over the kind of commerce mentioned here. The view which the Commission took of pooling was upheld by Commissioner Dey in his testimony before the Cullom Committee at Des Moines, on June 19, 1885, in which he

<sup>1</sup> Report, 1883, p. 43.

maintained that, although pooling contracts did away to a large extent with competition, they were advantageous to shippers in ensuring stable rates. He maintained that pools should be legalized, and should be subject to government authority.<sup>1</sup>

<sup>1</sup> Cullom Committee Report, Senate Reports, 1st sess., 49th Congress, vol. iii., p. 964. See also report of Commissioner Dey on pooling, "Report of Sixth Annual Convention of Railroad Commissioners," May, 1894, p. 9. The opinions regarding pooling, as presented in the testimony before the Cullom Committee at Des Moines, were varied. We are concerned here, however, only with the position of the Commission on the question. For views of Iowa shippers, see "Cullom Committee Report," part ii., pp. 943-1081 *passim*.

**CHAPTER IV.****ADEQUATE SERVICE.**

THE informal character of the Board encouraged complaints of every conceivable kind. Some of these the Board refused to entertain because of want of jurisdiction, but the major portion were settled satisfactorily to the parties aggrieved. Questions of damages, abandonment of track, lack of proper station facilities, negligence, violation of contract, construction of crossings and cattle-guards, and many more, were passed upon by the Commissioners.

We shall take up first the cases involving the duty of a railroad company to furnish adequate service to the territory through which it passes. Under this head comes the question of the right of a railroad to abandon its track. The first and most important case of this kind was that of the citizens of Northwood and Worth County vs. The Central Iowa Railway Company.<sup>1</sup> The case was a complicated one, and required a careful judicial decision from the Board. The Central Railroad Company of Iowa had extended its line into Northwood in consideration of grants of land and payments of money by citizens of Northwood and Worth County. Later the Burlington, Cedar Rapids, and

<sup>1</sup> Report, 1882, p. 468. See also celebrated case of citizens of Fort Dodge vs. D. M. & Ft. D. R.R., and C., R. I., & P. R.R. Report, 1889, pp. 36, 982, 987; Report, 1891, p. 39.

Northern extended its line and ran from Manly Junction into Northwood over the line of the Central. The Central subsequently went into the hands of a receiver, and then was purchased by the Central Iowa Railway Company, which leased outright the section of road from Manly Junction to Northwood to the Burlington, Cedar Rapids, and Northern Railway. Shortly thereafter the operation of the short line was discontinued by the Central, thus leaving the citizens of Northwood with but one road, whereas previously they had had two competing roads. The respondent, an entirely different corporation from the one that had made the contract with the citizens of Northwood, claimed exemption from the terms of the contract. It had leased this portion of the line to another company, and had therefore no control over it. It could not operate a line which it had rented to another corporation.

The Commissioners held that all the duties and obligations assumed by the original line passed in the sale to the vendee; moreover, a road had not the power to make a lease that would prevent it from carrying out its contract obligations. It was decided that respondent was under legal obligation to operate this portion of the road that had been abandoned. A petition for rehearing<sup>1</sup> was presented by the railroad company on July 14, 1883, which was denied by the Board after consideration. The order of the Commissioners was merely in the form of a recommendation, and could not be enforced. The road persisted in its refusal to obey; and in May, 1884, the Board certified the case to the attorney-general. The outcome was the issuance of a

<sup>1</sup> Report, 1883, p. 599.

mandatory injunction by the District Court to compel the defendant to equip, maintain, and operate that part of its line from Manly Junction to Northwood. An appeal was taken to the Supreme Court of Iowa; and a decision was reached on March 15, 1887,<sup>1</sup> in which the order of the Railroad Commissioners was held to be reasonable and just on the grounds of the original decision. The Court said, "It will be understood that we do not determine that a contract providing for a joint running arrangement over that part of the line from Manly Junction to Northwood would be illegal. It is the surrender by the Central Railway Company of any right to operate the line, and giving the exclusive right to the Burlington, Cedar Rapids, and Northern Railway Company to operate it, that we hold to be unauthorized by law." The case attracted wide attention, for it was the first in which there had been a refusal on the part of a company to comply with the finding of the Commission. A complaint of a similar character was entered by the citizens of Elkader and Clayton County, Ia., against the Chicago, Milwaukee, and St. Paul Railway Company,<sup>2</sup> in which the railroad company refused to operate the abandoned portion of the road, pending the decision in the Northwood case; but complied later with that decision, and re-established connection with complaining points.

Another frequent cause of complaint due to the lack of proper service was the failure to furnish cars. Forty cases of this kind were presented during the life of the Advisory Commission. The early cases of 1880 and 1881 were concerned largely with the coal problem, which is

<sup>1</sup> 71 Iowa, 410.   <sup>2</sup> Report, 1885, p. 583; Report, 1886, p. 473.

discussed elsewhere. One of the most important cases was that of Samuel Lilburn against the Chicago, Rock Island, and Pacific Railroad Company, filed June 7, 1880.<sup>1</sup> The Chicago, Rock Island, and Pacific declined to receive at Keokuk cars of the Merchants Despatch Transportation Company for a haul to Ottumwa and return, as an arrangement existed with the Chicago, Burlington, and Quincy by which the business of this territory was given to the latter road. Shipment over the Chicago, Burlington, and Quincy was, however, more expensive than over the Chicago, Rock Island, and Pacific. Sect. 10 of the law of 1878 reads as follows:—

“It shall be the duty of any railroad corporation when within their power to do so, and upon reasonable notice, to furnish suitable cars to any and all persons, who may apply therefor, for the transportation of any and all kinds of freight, and to receive and transport such freight with all reasonable despatch, and to provide and keep suitable facilities for the receiving and handling the same, at any depot on the line of its road; and also receive and transport in like manner the empty or loaded cars furnished by any connecting road to be delivered at any station or stations on the line of its road, to be loaded or discharged or reloaded and returned to the road so connected; and for compensation it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad for a similar service.”

The respondent argued that the Merchants Despatch Transportation Company was not a railroad company, and that a railroad company was obliged only to haul cars of a connecting road. It was further argued that respondent could not be compelled “to receive at the boundary line of the State cars of foreign corporations.”

<sup>1</sup> Report, 1880, p. 77.

The Commissioners held that the words "any connecting roads," as used in Sect. 10 of the law, were of the most sweeping significance; and they did not feel that they had "any authority to narrow the meaning of the terms used, and thus limit the rights and privileges of our commerce." In the second place, the Merchants Despatch Transportation Company ran its cars over the connecting road with the road's permission, and discharged that company's transportation duties, and must therefore be regarded as a connecting road. The decision of the Commissioners was complied with, and the cars furnished. There was noticeable in this case a persistence on the part of counsel for the railroad to regard the Board as a species of court, bound in their methods of procedure by rules of court, and to insist that formal complaints must be filed by the Board against the offender,—a view out of harmony with the spirit of the law under which the Commission was created.<sup>1</sup>

The Board held, in complaints brought before them, that the interpretation of Sect. 10 of the statute did not require a railroad company to furnish cars for the transportation of freight off from its own line.<sup>2</sup> The case in which this point was first decided was one against the Illinois Central, which is intersected by ten different connecting roads. If the law were interpreted otherwise, the result would be to scatter the cars of the defendant along all of these connecting roads, and to place the company at the mercy of competing lines.

<sup>1</sup> For similar case, see Report, 1881, p. 134.

<sup>2</sup> Alex. Risk vs. Illinois Central, Report, 1880, p. 115. See also Hammond vs. C. R. I., and P., Report, 1888, p. 674.

Numerous complaints of delay in transit were settled by the Commission in accordance with the provision of Sect. 10, requiring railroads to receive and transport such freight with all reasonable despatch. They recognized the possibility of legitimate delays.<sup>1</sup>

Another class of cases of considerable importance was that arising from the necessity for wyes and station facilities at the intersection of roads. The law on the subject is to be found in Chap. 18, Acts of the Fifteenth General Assembly.

"Any railway corporation operating a railway in this State, intersecting or crossing any other line of railway, of the same gauge, operated by any other company shall by means of a wye or other suitable and proper means, be made to connect with such other railway so intersected or crossed."

"When such corporations are unable to agree upon the method and terms of connection, . . . either or any person interested in having connection made, may make application to the District or Circuit Court in any county in which said connection may be desired or located or to the Judge of said Courts, if in vacation, after ten days' notice in writing to the companies. After hearing the parties, or on default, the said Judge shall appoint three disinterested persons, being presidents or superintendents of railways, or experts in railway business, without regard to the place of residence, as commissioners to determine the methods and terms of connection, and rules and regulations necessary thereto."

Sect. 3 of Chap. 77 of the Laws of the Seventeenth General Assembly, under which the Board was created, has the following to say regarding location of station houses:—

"Whenever, in the judgment of the Railway Commissioners, . . . any addition to or change of its station or station-

<sup>1</sup> Report, 1883, p. 587.

houses, . . . is reasonable and expedient in order to promote the security, convenience, and accommodation of the public, said Railway Commissioners shall inform such railroad corporation . . . of the changes which they adjudge to be proper," etc.

The companies interpreted the law regarding wyes to mean that they were not bound to put in connecting tracks provided both of the roads intersecting agreed that they were not needed. It was a matter for the roads to settle. Private parties were not interested.<sup>1</sup> In a case filed Nov. 29, 1881, "there seemed to be a persistent determination on the part of one of the companies to ignore the requirements of the law, and the findings of the Commissioners, the theory being that the managers of the road were the judges of the necessity of the connecting tracks, and that the law being founded in reason, they should not be required to obey its mandates if there was not a demand for the interchange of cars at that station."<sup>2</sup> The Commissioners were obliged to call the attention of the company to the imperative character of the law. Seventeen cases of complaint of this kind were reported during the time of the advisory commission, and almost without exception the recommendations of the Board were complied with.

On Sept. 19, 1883, a petition was filed by citizens of Herndon and vicinity for a passenger-depot at the crossing of the Chicago, Milwaukee, and St. Paul, and Wisconsin, St. Louis, and Pacific Railways.<sup>3</sup> The Commissioners, after investigation, decided that a station was needed, but they held that the law creating the

<sup>1</sup> Report, 1880, p. 136.

<sup>2</sup> Report, 1882, p. 422. *J. O. Hanna vs. C. and N. W. Ry.*

<sup>3</sup> Report, 1883, p. 708.

Commission did not intend to convey to it power to compel companies to erect and maintain passenger-stations at such points. Thirty cases of the same kind were pending in the State, and the Commission therefore recommended the passage of a general law requiring all railroads crossing at grade to erect and maintain suitable station-houses at crossings. In accordance with the recommendation of the Board, a law was passed providing for the erection and maintenance of station-houses at points of intersection of railroads, whenever it should be so ordered by the Board.<sup>1</sup> The Board was also given the power to order the warming and lighting of the passenger-houses, and the fixing of a reasonable time in which the houses should be kept open for passengers, both before and after the arrival of trains. The Commissioners were authorized to fix the proportion of expense of construction and maintenance to be paid by the companies, and to order the connection of tracks for the transfer of freight. Failure on the part of a railroad company to comply with the order after ninety days' notice subjected it to a fine of twenty-five dollars for each day's failure to comply. The Commission at once took into its hands the establishment of needed stations, and many were located. Aside from petitions relating to location of stations, petitions were received asking for permission to change the names of stations in cases where the names of post-offices and the names of stations were different, and in cases where different names had been given to the same point, or nearly the same, by connecting roads. The Board, while recognizing the soundness of the

<sup>1</sup> Chap. 24, 20th G. A.

reasons for the change in almost every case, held that "an examination of Sect. 3 of the Commissioner law has satisfied the members of the Board that fixing the names of stations is not one of the powers conferred by law upon the Commission."

The question, whether the requirement upon railroads to handle the cars of connecting lines applied to switch-tracks, arose in a case filed April 14, 1884.<sup>1</sup> The Wisconsin, Iowa, and Nebraska Railway Company had sent a shipment of live hogs to the packing-house at Marshalltown over the side-track of the Chicago and Northwestern upon payment of the usual switching charges. But the Northwestern refused to allow empty cars of complainant to go to the packing-house for the shipment of product out. The Commissioners held that the Chicago and Northwestern was justified in its refusal to grant the use of its track to a competitive line; that it was built as an individual enterprise; that the usual mileage rates charged for switching would not be a compensation for the service rendered, and that "the implied contract in making the expenditure the Commissioners believe to have been the transportation of hogs in and the product out to market over a long line of its own road, and any other is hardly consistent with the motives that prompted the outlay." The Wisconsin, Iowa, and Nebraska Railway was not precluded from building a spur-track to the packing-house, and thus securing the advantages of the business.

Under the provisions of the Act of 1878, requiring the Board to inform the railroad corporation when "a change in the mode of operating its road and conduct-

<sup>1</sup> W. I. and N. vs. C. and N. W., Report, 1884, p. 530.

ing its business is reasonable and expedient in order to promote the security, convenience, and accommodation of the public," the Board took cognizance of a number of cases involving the question of adequate train service. These included the demand that roads should be required to furnish additional facilities, that trains should be stopped at crossings, that roads should be kept clear of snow, etc., and in almost all cases, when the complaints were substantiated, the roads complied with the findings of the Commissioners. In a case filed May 31, 1882,<sup>1</sup> involving a petition that trains should be stopped for passengers at a crossing, the Board said : "The travelling public has some rights acquired by the use of the railway, and among them there is none that partakes more of the character of the railway itself than that they are entitled to the privilege of reaching their destination without great delay, certainly without unnecessary delay, and that delays that in other modes of conveyance might not be serious, in railways are."

<sup>1</sup> Report, 1882, p. 529.

**CHAPTER V.****MAINTENANCE OF WAY.**

ANOTHER class of complaints closely allied with those of railroad service concerned the maintenance of way, and the keeping of the road in proper repair. Such were cases of the need of drainage facilities, cases of obstruction and overflow, unsafe condition of roads and bridges, the construction of viaducts, the maintenance of proper crossings and cattle-guards, the fencing of track, and the like.

Cases of obstruction and overflow involved the definition of a navigable stream. Railroads had in many cases built bridges in such a way as to obstruct navigation, either failing to provide a draw or neglecting to furnish the means of operating it. The abandonment of the investigation<sup>1</sup> in one case, and the modification of conditions after the road was built in the second,<sup>2</sup> prevented the Commissioners from rendering a decision upon the question of navigability; but the Board held that the general supervisory powers granted them authorized inquiry into such cases and justified decision.

In the matter of unsafe condition of roads and bridges, the duties of the Commission were explicit. Sect. 3 of the law says that the Board shall "from time to time carefully examine and inspect the condition of

<sup>1</sup> Report, 1885, p. 491.

<sup>2</sup> Report, 1886, p. 474.

each railroad in the State, and of its equipment, and the manner of its conduct and management with reference to the public safety and convenience, and for the purpose of keeping the several railroad companies advised as to the safety of their bridges, shall make a semi-annual examination of the same, and report their condition to the said companies. And if any bridge shall be deemed unsafe by the Commissioners they shall notify the railroad company immediately, and it shall be the duty of said railroad company to put in repair within ten days after receiving said notice, said bridge; and in default thereof, said Commissioners are hereby authorized and empowered to stop and prevent said railroad company from running or passing its trains over said bridge while in its unsafe condition." As a rule, the roads were kept in good condition during this period, and but few complaints of this character arose.

Twenty cases of refusal to fence track were reported by the Board up to 1888. The law on the subject is found in Sect. 1289 of the Code. This section makes the company "that fails to fence its roads when it has the right to fence liable to the owner for any injury to stock by reason of the want of such fence." No power was given to the Board or any other agency to compel a railroad to fence its track ; but redress could be sought in the courts in cases of damage to stock. The Board frequently acted as arbitrator in such cases.

Sect. 1268 of the Code requires a railroad company to build a causeway or a cattle-guard where a party owns land on both sides of the road. This section the Board always interpreted literally, and recommended a compliance with it when the land-owners desired it, save

that they refused to recommend crossings and cattle-guards in dangerous or unsuitable places.

Sect. 1288, as far as it relates to farm crossings, requires the construction of proper cattle-guards where the road enters or leaves any improved or fenced lands, and the erection of suitable signs of warning at such crossings; any railroad neglecting to comply with the law being liable for all damages sustained. On June 18, 1886, a case came up for rehearing, in which the Board had recommended the construction of cattle-guards.<sup>1</sup> The respondent, the Chicago and Northwestern Railway, maintained "that the Board of Railroad Commissioners is a judicial body; that both railroad companies and people are alike interested in its success, and the success of every such tribunal depends upon its assuming no more than it can accomplish within its jurisdiction; and that there can be no surer means of failure than for members individually or collectively to assume to act as arbitrators in every individual or private grievance. That if the complainant has a dispute with the respondent, it is a private matter to be decided by the courts, and that the Board, organized by the public to protect public rights only, ought not to interfere, even to the extent of throwing its influence on one side or the other; that it is clear that the decision of the Board could not be certified for enforcement, and therefore its opinion ought not to be officially given, even by way of advice." To which the Board replied that they had not intended to thrust themselves as arbitrators upon any parties, and had always declined to act when advised that either party to a controversy, over which

<sup>1</sup> Report, 1886, p. 571.

they had no jurisdiction by the law, felt unwilling to submit the controversy to them.

The question of highway and street crossings is similar to that of farm crossings, and is covered by Sect. 1288 above referred to. In cases of highway crossings where grade crossings would be dangerous, the Commissioners have ordered overhead crossings, taking into account, of course, the necessary expense involved. They have held that such cases involve questions of public right, and have certified them to the attorney-general for trial in the courts<sup>1</sup> whenever the railroad companies have refused to comply with their decisions.

<sup>1</sup> Report, 1887, p. 718.

## CHAPTER VI.

DAMAGES.

CASES of damages came frequently before the Board for adjudication. The complaints were varied in character, including damages to shipments in transit, especially shipments of stock, damages from fire, negligence on the part of companies, obstruction, overflow, and the like. In cases of this kind the Board could simply act as arbitrators between parties who were willing to come to an agreement; in this way many cases of damages were settled without resort to the courts. The procedure of the Board in such cases was informal. The complainant was at first recommended to present his claim to the railroad company; and if he should be unable to reach a settlement, then to refer all the papers in the case to the Board for examination. These cases the Board examined into with care, weighing the evidence submitted upon both sides, and rendering decision in accordance with the facts presented, feeling at perfect liberty, however, to go beyond the prerogatives of a court in seeking material upon which to base judgment.

In cases in which the railroad company denied all liability, and served notice that it would not pay the loss, the Board declined to act, for a decision under such circumstances would require money judgment which the law gave the Board no power to render. The compul-

sory power of the law must be invoked, and a formal action brought against the company. Cases of personal injury, due to the alleged negligence of the railroad company, the Board steadily refused to entertain, unless these were voluntarily submitted to them by both the contending parties. Only in cases affecting public right did the Board have authority to certify their orders to the courts, and this not until after the passage of the amendment of 1884.<sup>1</sup>

Questions outside their jurisdiction were at times considered by the Board, but only when they were called as arbitrators at the wish of both the contending parties. As already stated, if the question of jurisdiction was raised by either party to the case, they invariably declined to interfere. Their position upon this question is clearly stated in a case argued before them March 18, 1886.<sup>2</sup> This was a case in which the company refused to pay a bill for the printing of special notices of election for tax aid. It denied the claim and the jurisdiction of the Board over the subject-matter. Complainant's attorney filed an argument in support of the jurisdiction of the Board. The Board responded :—

"The claim is one pure and simple for a sum of money due upon a contract. The contract is in no way connected with the operation of a railway, the condition of its line, or the accommodation or safety of the public. Nor is it a contract in any way affected by the rights, duties, or liabilities of a common carrier. The only connection it seems to have in any way with railway matters is the fact that the respondent party is the railway company. The only relief that could be given, if resisted by the respondent, would be through the judgment of a court, and

<sup>1</sup> See *post*, p. 98.

<sup>2</sup> Report, 1886, p. 515, Adams vs. C. I. & D. Ry.

perhaps the processes of which courts enforced payment of a judgment rendered. The general supervision of railways required of the Commissioners has reference to the operation of steam railways and the violation of the laws of the State for their operation, the condition and equipment of the lines for public safety and convenience, the condition of bridges, the charter and other legal liabilities of railways, the necessity of repairs, additions to rolling-stock, changes or additions to station-houses, erection of stations at crossings, rates of fare for freight and passengers; and in all these matters the Commissioners are to have in view the promotion of the security, convenience, and accommodation of the public. It is possible, as contended by complainant's attorney, that in the many hundred varied cases considered by the Commissioners since the law has been in force, there have been some acted upon that would not come strictly within the lines above marked out; but, if so, they have been cases in which no question of jurisdiction has been raised by either of the contending parties. But in this case the question has been raised, and must be met; and we think it evident that the case does not come within the defined limits.

"It was very plausibly and forcibly contended by complainant's counsel that the theory of arbitration pervaded the Commissioner law and is its true spirit. We believe and have ever acted upon this idea. But we do not find in the law the idea of enforced arbitration of matters outside the limits of the law above set forth. The matter in question in the case is one of purely private right, and has no reference to the duties of the railway as a public carrier, nor to the method of its operation nor equipment, nor is it in any way connected with the promotion of the security, convenience, and accommodation of the public. It does not seem to us nearly so strong a case as that of the personal injury resulting from the alleged negligence of those charged with the operation of the railway; and yet the Commissioners would not feel authorized to take cognizance of such a case, unless all parties voluntarily submitted the facts to the Board for investigation and determination. Our opinion, therefore, is that the case is not one which the Board is authorized to hear and determine, against the objection formally made to its jurisdiction by one of the contend-

ing parties, and we must therefore decline to further consider the same."

The first claim for damages in which the railroad company refused to accept the finding of the Board was filed Jan. 16, 1883.<sup>1</sup> The case concerned apples injured in shipment. The Commissioners held that the claim was a just one; but the Central Iowa Railway Company, while not denying the jurisdiction of the Board, denied both the legality and equity of the claim, and declined to pay it. Secretary Morgan of the Board wrote to the complainants as follows:—

"I send you with this a copy of the Commissioner law. By examining this you will see that it is the duty of this Board to examine all cases presented, and report to the company what, in their judgment, should be done. The law gives them no power to enforce their decisions. It has hitherto rarely happened that the companies have not complied with the holdings of the Commissioners. In this case it is evident that the company does not intend to respect the decision, and it will be necessary for you to apply for relief to a court that has power to enforce its findings."

Upon inquiry by the complainants as to whether their case did not come under the new law of the Twentieth General Assembly,<sup>2</sup> and could not be enforced through the Circuit and District Courts, the Board replied:—

"Upon examination of the law to which you refer, the Board finds that jurisdiction is conferred upon the Circuit and District Courts of the State to enforce by proper decrees, injunctions, and orders, the rulings, orders, and regulations *affecting public right* made or to be made by the Board of Railroad Commissioners. It is the opinion of the Commissioners that they are only authorized to advise the attorney-general of the refusal to obey orders affecting public right. Your claim is for loss or damage resulting

<sup>1</sup> Report, 1883, p. 550.

<sup>2</sup> See p. 110.

from alleged neglect to promptly forward perishable articles, which neglect resulted in their loss. The recommendation made was one that seems to alone affect *private right*. Your case appears to be one for the courts. They alone can furnish you with the relief you desire, the Commissioners having, in their view, done all that they are by law authorized to do in your behalf.”<sup>1</sup>

In the case filed May 25, 1882,<sup>2</sup> a claim for damages was entered in which the complainants charged that an amount of butter which was hauled to the railway station, and by reason of the non-arrival of the refrigerator car at the advertised time, was exposed to the heat, had melted, and consequently deteriorated in value. It was argued by the respondents that they were under no legal obligation to furnish extraordinary facilities for the transportation of perishable articles, and, again, that to advertise the arrival of a car at a certain time did not constitute a contract between a carrier and shipper, the carrier being under obligations only to use ordinary diligence. This had been done. The Board awarded the damages to complainant on the ground that the railroad, having encouraged the growth of dairy interests through the offer of special privileges, was in duty bound to make the service reliable. The delay in arrival of trains could not always be avoided; but at least provision should be made to notify shippers of delays, and facilities should be offered for proper storage to prevent loss. The award was promptly paid by the railroad company. General

<sup>1</sup> Report, 1884, p. 5.

<sup>2</sup> Marshall & Son, Chariton, Ia., vs. C., B., & Q., Report, 1882, p. 497.

Freight Agent Ripley, in submitting to the decision, wrote as follows:—

"In doing this we do not intend to be understood as in the slightest degree conceding the justice of your decision in this particular case. But believing that in the main your intention is to deal fairly with the railroads as well as with the people, and believing that in the past your decisions have been, as a rule, just and equitable, we are not disposed further to contest this claim, although we have not in the slightest particular changed our opinion in regard to it."

Whether the jurisdiction of the Board would have been questioned, and the case taken to the courts, had the amount at issue been larger, it is impossible to tell. It is significant, however, that the railroad submitted against its will to the recommendation of a commission which had no direct power to enforce its findings. Public opinion, with means ready at hand to make itself effective, such as the legislature and the courts, is a powerful factor in settling controversies of this character.

Other powers of adjudication were granted to the Commission in addition to those impliedly possessed under the original law. Chap. 190, Laws of the Twentieth General Assembly, gave power to railroad companies to condemn lands for additional depot grounds in the same manner as for right of way. But the companies were required first to petition the Railroad Commissioners, who were to give notice to the land-owner, and report by certificate to the clerk of the Circuit Court in the city in which the land was situated, the amount and description of the additional lands necessary for the reasonable transaction of the business of the company. These duties the Board performed as occasion required.



**CHAPTER VII.****OVERCHARGE.**

OVERCHARGE was the most frequent cause of complaint in the history of the Advisory Commission. Most of the cases involved no important principle, but simply required an investigation of rate schedules by the Commissioners. In many cases the overcharge was an error on the part of the company, which could have been rectified without any appeal to the Board. One of the great benefits which the Board conferred during these years was in removing misunderstandings, and in promoting such relations that questions of difference would adjust themselves.

A case arose in December, 1883,<sup>1</sup> in which an interesting principle was involved. A shipment of freight was made from Chicago to Grundy Center, Ia., for \$2.85, of which the Chicago and Northwestern received 75 cents from Chicago to Cedar Rapids, 220 miles, and the Burlington, Cedar Rapids, and Northern, \$2.10 from Cedar Rapids to Grundy Center, 69 miles, the latter rate being greater than the local rate of the Burlington, Cedar Rapids, and Northern for this distance. The Commissioners asserted that the practice of giving to branch and smaller lines a greater percentage of the through rate than a *pro rata* for collecting and distributing freight was universal.

<sup>1</sup> Report, 1883, p. 733.

Without it few of the branch lines could pay operating expenses. So long as the through rate was no higher to the shipper, the policy was correct, both in theory and practice, and would be sustained by all railroad experience. It was a matter between the two roads, with which the shipper had nothing to do.<sup>1</sup>

The next year a case involving the same parties arose,<sup>2</sup> in which the shipper had billed his goods from Chicago to Cedar Rapids, and had then rebilled them from Cedar Rapids over the Burlington, Cedar Rapids, and Northern, in order to secure the local rates of the latter. This road had, however, charged him more than the local rates,—the proportion of the through rate allowed it by the Chicago and Northwestern. The Burlington, Cedar Rapids, and Northern endeavored to justify the excessive charge by claiming that the business was through Chicago business, and not Cedar Rapids business. If it were not so, the Chicago and Northwestern would have charged the shipper a rate to Cedar Rapids which would have been nearly equal to the through rate, and to this would have had to be added the local rate over the Burlington, Cedar Rapids, and Northern, making the entire rate much higher than the shipper was then paying. The Board held that it had nothing to do with a shipment from Chicago to Cedar Rapids; that the shipment from Cedar Rapids over the Burlington, Cedar Rapids, and Northern was a distinct and separate shipment, and no part of a through shipment, and that the charge for the haul could not be higher than local rates.

<sup>1</sup> See also Report, 1884, pp. 532, 519, 524.

<sup>2</sup> Report, 1884, p. 515.

An important case of overcharge, filed Feb. 20, 1884, is discussed in connection with the subject of interstate commerce.

In addition to the forms of complaint already mentioned, matters of all sorts connected with the subject of railroad transportation were passed upon. These miscellaneous complaints included such questions as baggage regulations, shipping regulations, ticket regulations, violation of contract, cases of trespass, lack of transfer facilities, and the like.

## CHAPTER VIII.

*INTERSTATE COMMERCE.*

THE Iowa Board were conscientious and earnest in their endeavors to reach a solution of the railroad question through the commission system. Their efforts had not always been crowned with success. Hostile criticism had been poured upon them. This was no doubt deserved in part, but many of the critics failed to take all the conditions into account. One of the main difficulties with which the Commission had to contend was Iowa's geographical and industrial position, by reason of which a large portion of the business was beyond the State's jurisdiction.

When the Commission first came into being, it was estimated that not more than fifteen per cent of the Iowa tonnage was local; and this estimate was probably too large. The Commissioners realized at once that, if they were permitted to have control only over shipments which began and ended in the State, their jurisdiction was to be seriously limited. It had been thought in the earlier years of the State's commerce that the Mississippi River might be used as a lever upon the railroads to induce them to lower their rates, but this idea had long since been abandoned. It was suggested in the<sup>1</sup> early reports of the Commission that perhaps a railroad might be constructed parallel to the river, which, having

<sup>1</sup> Report, 1879, p. 66.

no grades to overcome, could handle large trains at a minimum of cost, and thus furnish an effective competition with the roads east. It was regarded as unwise, however, to interfere with the accustomed course of trade, unless some advantage was to be secured thereby.

The State of Iowa was obliged early to settle the question whether it had any jurisdiction over commerce which was interstate. At the time the issue was raised, the Granger law was in operation. The case was that of John A. Carton & Company vs. Illinois Central Railroad Company, and concerned a shipment from Iowa into Illinois. A law similar to the Iowa law was in operation in Illinois, with a maximum rate in Illinois lower than that in Iowa. It was contended that the contract for shipment was an Iowa contract, and followed the freight to its destination ; that the maximum rate in Iowa being higher than that in Illinois, such contract was not repugnant to Illinois interests ; that it was not in conflict with any law or right of the General Government, as Congress had neglected to regulate, and that, in absence of regulation by Congress, the States were justified in legislating, for it was a power concurrently vested in the States and the National Government. The Supreme Court of Iowa decided the case in 1882, and held "that an act of the State Legislature whose object and purpose is to control and regulate the shipment of freight to points in other States is in violation of Art. 1, Sect. 8, of the Constitution of the United States, as being legislation on interstate commerce, a subject which in its nature is national, and requiring the exclusive legislation of Congress. An interstate contract of shipment entered into by a com-

mon carrier is an entire contract, and the laws of the State wherein it is made, so far as they attempt to regulate interstate commerce, do not enter into it as a part of the contract, being repugnant to the Federal Constitution.”<sup>1</sup>

The Court admitted that it was competent for the States, in absence of Congressional legislation, to legislate respecting interstate commerce in a certain line of cases;<sup>2</sup> but these cases were such as relate to bridges or dams across streams wholly within a State, police laws relating to pilots of vessels, health laws, and the like. The power to enact laws upon subjects in their nature national, and not merely local, was exclusively with Congress. Judge Beck dissented from the majority opinion, and suggested that the constitutional prohibition extended only to those regulations that imposed burdens and restrictions upon interstate commerce; that the statutes that removed burdens and restrictions, that protected it from the unjust exactions of common carriers, were not regulations of commerce contemplated in the Constitution of the United States. The Iowa Commissioners agreed with the decision of the Court. They called attention to an Illinois Supreme Court decision, in which the opposite view was held.<sup>3</sup> In this case the Illinois Court relied mainly upon the opinion of the Supreme Court of the United States in the case of *Peik vs. the Northwestern Railroad*. The following is the important clause of this latter case:<sup>4</sup>—

<sup>1</sup> Report, 1882, p. 28. See also 59 Iowa, 148.

<sup>2</sup> Report, 1886, p. 29.

<sup>3</sup> *People of the State of Illinois vs. W., St. L., and P. R. R. Co.*, 104 Ill. 476.

<sup>4</sup> Report, 1886, p. 36. 94 U. S. 164.

"The law is confined to State commerce, or such interstate commerce as directly affects the people of Wisconsin. Until Congress acts in reference to the relations of the company to interstate commerce, it is certainly in the power of Wisconsin to regulate its fares so far as they are of domestic concern. With the people of Wisconsin this company has domestic relations. Incidentally they may reach beyond the State, but certainly until Congress undertakes to regulate for these without the State, Wisconsin may provide for these within, even though it may indirectly affect those without."

The Iowa Board saw no inconsistency between this decision and that of the Iowa Supreme Court, but interpreted this to mean, that, even if the rate which Wisconsin fixes should incidentally (for the purpose of paying interest or dividends upon the property invested in the road) increase the cost of through transportation, the Supreme Court of the United States would not hold it to be a regulation of interstate commerce. This position was supported by later opinions of the Supreme Court.<sup>1</sup>

On Feb. 20, 1884, a complaint involving questions of interstate commerce was filed with the Board. The personnel of the Board had changed somewhat since the previous decision. Mr. Peter A. Dey and Major A. R. Anderson were both members of the Board in 1882, at the time of the decision in the case of Carton & Company; but Major Anderson had either changed his views since that time, or had preferred not to express them in the first case in the form of a minority report. The case was a complaint of overcharge<sup>2</sup> against the Chicago and

<sup>1</sup> Hall vs. DeCuir, and Railroad Company vs. Hannan (95 U.S. 465, 485).

<sup>2</sup> Ed. Barber vs. C. & N. W. Ry. Co., Report, 1884, p. 49.

Northwestern Railway Company, on a shipment from Morrison, Ill., to Glidden, Ia. The company maintained that the Commission had no authority over the matter, as the shipment was interstate. The majority of the Board, however, sustained the complaint, and ordered the company to revise its interstate tariff so that it should correspond with the Iowa local distance tariff, "which it is here assumed is arranged on a sufficiently remunerative basis." The line of reasoning by which this decision was reached is ingenious. Commissioner Anderson found a clear distinction, on principle, between a statute fixing maximum rates for the transportation of freight, and a statute prohibiting unjust discrimination among shippers.

"The former is fixing a rate or toll which the common carrier may charge for the transportation of freight from one point to another, while the latter makes no attempt to fix maximum rates, but is pure and simple the legislative exercise of the public power of the State to protect its citizens from extortion or oppression at the hands of the common carrier. In the first instance a rate is established within which all rates must be fixed; while in the second instance the carrier is left to fix any rate he may see fit for a given service, so long as it is within the common limit of being a reasonable compensation for the service performed. It can make no possible difference in the case, so far as the question of jurisdiction is concerned, that the freight, the subject of the alleged overcharge, crossed a State line."<sup>1</sup>

In other words, the State has the power to provide by law for the prevention of unjust discrimination and unreasonable rates for freight, even though the freight, the subject of the rate, crosses a State line in transit. Commissioner Coffin arrived at the same conclusion, but

<sup>1</sup> Report, 1884, p. 50.

by a different line of reasoning. The States gave to Congress the power to regulate commerce among themselves for the purpose of securing to each State the most complete freedom in matters of trade. The power is with Congress, and is to remain with Congress, whether exercised or not, merely to prevent any State from putting restrictions upon commerce. If the States have given up the power to regulate commerce, plainly the railroad, which is a creature of the State, cannot impose hindrances. But an unjust charge by a railroad is a restriction upon interstate commerce; and a State is committing a wrong of omission, if not of commission, in allowing its creature to impose restrictions. Manifestly the only thing for the State to do is to abolish the restriction. Commissioner Dey, in a minority view,<sup>1</sup> summarily disposed of the case by saying:—

“I understand that any decision of the Supreme Court of the State has the effect of law, and that, unless reversed, the inferior courts, commissioners, and all citizens are bound by it as by statute law, irrespective of their views of its soundness or justice.”

He held that the case of *Carton vs. Illinois Central* was applicable to this case. He called attention to the case of *William Kaiser vs. Illinois Central*, decided Oct. 24, 1883, in which Judge McCrary of the Circuit Court of the United States felt it incumbent upon him to follow the decision of the Iowa Supreme Court. Mr. Dey concluded with these trenchant sentences:—

“I have believed that, in making this order, my associates were governed rather by what they thought the law should be than what it is as expounded by the highest authority in the

<sup>1</sup> Report, 1884, p. 63.

State. If the Federal Courts regard it as incumbent upon them to follow the ruling of the Supreme Court of the State, it seems to me that a commission created by State authority is going beyond its powers when it attempts to do what the Court says the State in its sovereign capacity cannot do."

The decision was rendered March 31, 1884. The company removed the cause of complaint in the particular case, but on June 10 filed a petition for a rehearing on the question of a revision of its schedule. This was granted, and on Aug. 26 the Commissioners rendered their decision. But the personnel of the Board had changed again, Commissioner Anderson, who had concurred in the original decision, having been succeeded by Judge McDill, who had ever held the opinion that the State had no power to regulate interstate commerce. Plainly, then, if the other two Commissioners held to their original views, it would be left to the new member to decide the case. The petition was based upon the claim, first, that the Board had no power or jurisdiction to make the order; and second, that the original complaint raised no such questions as were decided by the Board. The Board rightly considered that these were questions for the courts. Accordingly, on Sept. 16, the case was certified to the attorney-general, to the end that suit might be brought for the enforcement of the original order, which required the railroad company to revise its interstate schedule of rates to correspond with the Iowa local-distance tariff. At the September term in 1885, Judge Baylies delivered an opinion holding that the Commissioners had no power to make the order in question. The inference to be drawn from Judge Baylies' decision is that, were it not for the case of Carton &

Company vs. Illinois Central Railroad, which prohibited the State from exercising any regulation over interstate commerce, he might have overruled the demurrer; for he did not think that the removal of restrictions upon interstate commerce, such as the doing away with discriminations, came within the Constitutional inhibition. An appeal was taken to the State Supreme Court, and on Dec. 2, 1886, the decision of the District Court was affirmed, and it was held that the Commissioners had no authority to make the order, and that to do so was to attempt to interfere with interstate commerce. The Supreme Court of Iowa, in rendering this decision, was aided by having before it the decision of the Supreme Court of the United States in the case of the People of the State of Illinois vs. the Wabash, St. Louis, and Pacific, which had been appealed from the Supreme Court of Illinois. The Illinois Court had held that the State could regulate railroad affairs for the benefit of its citizens, even if, in doing so, interstate commerce might be incidentally affected. The highest tribunal of the land had reversed this decision; and the Iowa Court relied upon this reversal, as well as upon the case previously decided in its own Court,<sup>1</sup> and the decision of Judge McCrary in the Circuit Court.<sup>2</sup>

This disposed of the question effectually; and the people looked to Congress to take the initiative in checking the evils incident to commerce, as it was then carried on between the States. On June 19 and 20, 1885, the Cullom Committee on Interstate Commerce<sup>3</sup> held

<sup>1</sup> *Carton vs. Illinois Central.*

<sup>2</sup> *William Kaiser vs. Illinois Central.*

<sup>3</sup> See reports.

an investigation at Des Moines ; and a very large number of witnesses, representing greatly varied interests, were examined. It is interesting to notice that all the witnesses except one favored control of interstate commerce through a national commission. The testimony brought out in a most gratifying way the healthy growth of sentiment in Iowa upon railroad matters, and was in striking contrast to the crude notions in vogue at the time of the Granger agitation.

**CHAPTER IX.****RAILROAD REPORTS.**

ONE of the early duties of the Commission, upon the successful performance of which depended in considerable measure a wise and judicious control of the railroads, was the establishment of a system of railroad reports, which should give the Board full knowledge of the condition of the companies. To establish a system which should prove acceptable to all the lines, and should be willingly adopted, was no light task.

Sect. 4 of the law of 1878 provided that the Commissioners should make full report to the Governor annually of the condition of the railroads. Sect. 5 reads as follows:—

“To enable said Commissioners to make such a report, the president or managing officer of each railroad corporation doing business in this State shall annually make to the said Commissioners, on the 15th day of the month of September, such returns in the form which they may prescribe, as will afford the information required for their said official report; such returns shall be verified by the oath of the officer making them; and any railroad corporation whose returns shall not be made as herein prescribed by the 15th day of September, shall be liable to a penalty of \$100 for each and every day after the 16th day of September that such returns shall be wilfully delayed or refused.”

Changes in phraseology were made in the law of 1888 (Sect. 22), but no change was made in principle.

The reports secured by the Commission at the close of the first year of its existence were not encouraging. Each railroad had its own methods of book-keeping. Some of them were not able to separate their Iowa business from the aggregate of their entire line. The system of reports was new both to the Commission and the railroads, and the difficulties were increased in some cases by wilful refusal of the companies to answer the questions asked. The returns, as summarized in the first report, amounted merely to careful approximations. In their second report, the Board advised that the Commissioners be required to report delinquencies in the matter of reports to the Governor, to the end that he might proceed at once to the collection of the penalty. There appears to have been no method prescribed for the enforcement of the imposed fines. After a somewhat extended discussion of the carelessness and inaccuracy of the reports, the Commissioners said:—

"We dwell on this subject here because we had hoped the returns of this year would have been more correct, and an improvement over the first year's. On the contrary, many of them are simple copies of last year, carrying forward, evidently without thought or care, absurd blunders that then seemed unnecessary."<sup>1</sup>

The reports were evidently filled out, in many cases, by clerks who had no conception of the meaning of figures, and the completed reports were sworn to by the officers without verification. In many cases the mistakes were intentional, the officials proceeding upon a theory that the railroad business was a private business.

<sup>1</sup> Report, 1879, p. 42.

with which the public had no concern. Accordingly, they complied only to such an extent as to prevent the passage of more stringent measures. The Commission early took a stand in favor of complete publicity of railroad operations as a panacea for the ills of railroad management. Publicity was necessary to establish public confidence, and the benefit resulting would accrue to carriers as well as to shippers.

The fifth division of Sect. 4 of the law of 1878 made it the duty of the Commissioners to report to the Governor each year "the cost and actual present cash value of each railroad and its equipment, including permanent way, buildings, and rolling-stock, and all fixtures and conveniences for transacting its business."

The Governor, in 1887, called the attention of the Commissioners to the fact that the railroads had neglected to reply to the questions bearing upon this subject; and upon Oct. 26 a special circular letter was sent to the roads, asking for this information. The Commissioners, in their letter to one of the roads, said, "The Commissioners desire the railroad companies to assume the responsibilities of such answers as they see fit to make, with the conviction that their answers will be used in the future."

The utter futility of such a provision in the law was shown in the replies received to the circular.<sup>1</sup> With but few exceptions, the roads responded that the cost of the railroads could not be ascertained, owing to the manner in which they were built — through the medium of construction companies. Moreover, any estimate of the "present cash value" would be a mere approximation,

<sup>1</sup> Report, 1887, p. 131.

well-nigh valueless. The responsibility for the determination of the value was therefore thrown entirely upon the Commissioners; and they adopted two bases of estimate,—the average market value for the year of the bonds and stock in localities where railroad property was continually bought and sold, and a valuation upon the basis of 6 per cent net earnings. The value of a road which had no stock and bonds, and no net earnings, was taken from the assessment made by the Executive Council for taxation purposes.

The blank furnished by the Commission to the roads was based upon the distribution of expenses and classification of accounts adopted by the Convention of State Railroad Commissioners, held at Saratoga, June, 1879. This was continued in force until 1889, when the blank of the National Commission was adopted, with the addition of such questions as were required by State law. The Commissioners have made every endeavor possible to secure complete and accurate reports from the companies; and the reports at present received, when compared with those received during the early years of the Commission, show that the Board has reaped a partial success from its efforts. But there is still much to be done. The last annual report of the Board, 1894, contains the following:—

“It has been very difficult to obtain information from these companies that would disclose the ‘working of the system of railroad transportation in the State,’ and this report, while it attempts to give detailed statements of the operation of the roads as limited by the State lines, is little more than an approximation. The Commissioners have given all the information that could be obtained from the data furnished; they have made

repeated calls for the information required by the Commissioner law, and have always been answered by the stereotyped reply, 'Our books are not kept in a manner to enable us to furnish the information called for.' Whether the law, as it now stands, is sufficient to sustain the Board in an order requiring the books of the companies reporting to be kept in such a manner as will enable them to answer fully, may be a question; an effort has been twice made to have such amendments to the statute as will relieve it of all doubt, but without success. No report can be made by a commission that will be entirely reliable, unless some power is given to elicit the facts necessary to make it correct, and this must go far enough to require books to be kept in such manner as to enable the information to be furnished."

**CHAPTER X.****INVESTIGATION OF ACCIDENTS.**

By the terms of Sect. 14 of the law of 1878, it was provided that:—

"Upon the occurrence of any serious accident upon a railroad, which shall result in personal injury or loss of life, the corporation operating the road upon which the accident occurred shall give immediate notice thereof to the Commissioners, whose duty it shall be, if they deem it necessary, to investigate the same, and promptly report to the Governor the extent of the personal injury or loss of life, and whether the same was the result of the mismanagement or neglect of the corporation on whose line the injury or loss of life occurred. *Provided*, that such report shall not be evidence, or referred to in any case in any court."

The Commissioners have complied with this requirement throughout the history of the Board, have carefully investigated the serious accidents, and reported them fully.

In their report for 1882, the Board called attention to the fact that a large percentage of injury and death to the railroad employees resulted from the method employed in coupling cars. During this year sixteen were killed and one hundred and eighty-two injured from this cause. In connection with their report for 1884,<sup>1</sup> the Commissioners presented the following startling statistics:—

<sup>1</sup> Page 39.

## COUPLING CARS.

	KILLED.	INJURED.		KILLED.	INJURED.
1878	17	70	1882	16	182
1879	14	55	1883	16	98
1880	17	87	1884	8	109
1881	20	64		108	665

This frightful loss of life naturally turned the attention of people to the discovery of some method by which the danger might be removed. The Commission discussed the Massachusetts law of 1884, requiring the use of safety couplers on freight-cars, and suggested similar action. They also recommended the application of the power-brake to freight-cars.

From this time on the subject was continually agitated by the Commissioners, and its discussion occupied a prominent place in their reports. In July, 1886, the National Master Car Builders Association made a test of freight-car brakes at Burlington, Ia., which was entirely successful, and aroused a large amount of favorable sentiment on the question. The Commission, though still continuing its agitation in favor of State action, admitted, in its report for 1889,<sup>1</sup> that national legislation would be much more effective and far-reaching than anything that could be done by individual States. The agitation for State action had its effect; and the Twenty-third General Assembly passed a law providing that new cars put into use in the State, and old cars sent to the shops for general repairs and needing new drawbars, must be equipped with safety or automatic couplers, and that after Jan. 1, 1895, *all* cars used in Iowa must be equipped with safety or automatic

<sup>1</sup> Page 47a.

couplers. That after Jan. 1, 1892, all locomotives used in Iowa must be equipped with power-brakes, and that after Jan. 1, 1893, all trains operated within the State must have "made up in them" a sufficient number of cars equipped with automatic and power brakes, to enable the engineer to control the train from the locomotive. The law was amended in 1892, and made more stringent, penalties being prescribed for failure to comply. The provision was introduced, that, after January, 1900, any common carrier shall refuse to accept or receive from any connecting line any car to be used in the State which is not fully equipped as required by the Act. The report of the Commission of 1892, the latest statistics obtainable, show that 19.36 per cent of the cars were equipped with train-brakes, and 22.87 per cent with automatic couplers, an evidence that genuine progress has been made in the adoption of safety appliances.

**CHAPTER XI.****CONCLUSIONS.**

THE Commissioners entered upon their work in 1878 with the hesitancy which always accompanies the inauguration of an experiment. They lacked the confidence in themselves which comes from a consciousness of the hearty and unanimous support of the people interested. Those who had most vigorously sustained the Granger legislation were naturally disinclined to lend to the new system perfectly loyal support. Moreover, many who were ready for something new opposed the law on account of its lack of the power of enforcement. Such persons did not perceive that it was the evident intention of the legislature to rely for the enforcement of the Board's orders upon the power of public opinion, which could quickly find expression through the legislature and the courts. The Commissioners had the undoubted support of the majority of the people, and at the beginning the apparently cordial support of the railroads. Thoughtful, far-seeing people had realized, as had the roads, that the Granger legislation would never prove a satisfactory solution of the question; and they were all willing and ready to unite upon something new, which had not the weight of an unsuccessful experience to drag it down. The experience of other States with the commission system was encouraging rather than otherwise, and the Board entered upon its duties

with the firm conviction that this system was unquestionably superior to any that had been tried, and would in the end prove successful. Whereas the tariff system had failed in almost every case, the commission system had succeeded to a remarkable degree in reducing the friction between the railroads and their patrons.

The purpose of the law was not to establish a third court, with all its forms of judicial procedure, but to furnish an informal medium of communication between the shippers and the railroads.<sup>1</sup> This Board was not to be bound in any of its actions by legal formulæ. It was to entertain any complaint, no matter how presented, and to investigate a trifling complaint with fully as much care as would be exercised in a more formally presented grievance. It was not the duty of the Board to weigh evidence, and determine its preponderance when parties differed as to the facts in a case. This was the prerogative of the courts. The Board was rather to determine the case upon a state of facts agreed to between complainant and respondent.

For the reason that findings resulting from such investigation might not always meet with favor, the legislature withheld the power of enforcement from the Board, so that upon the fairness and justice of its findings rested the question of compliance by the railroads. But these findings, when backed by public opinion, with ultimate power in the legislature and in the courts, were likely to be accepted as final unless palpably unjust; for the railroads, knowing full well the power of the legislature to pass more stringent measures, were

<sup>1</sup> Report, 1878, p. 10; Report, 1880, pp. 85, 107.

careful not to call down upon themselves the wrath of the people by refusals to obey.

One of the principal benefits resulting from such a system was the saving of expense due to the informal manner in which the cases were conducted, and the avoidance of the delay incident upon court procedure. Amounts too small for court adjudication could be collected through the medium of the Commission.

As the law began to be understood by the shippers of the State, complaints were received in great numbers. The increase in their number is not evidence, as many suppose, that the difficulties between shippers and carriers were increasing, but rather that the shippers had found a method of redress, and were no longer obliged to suffer in silence. It is gratifying to notice that the informal method of complaint at once became the popular one. During the first two years of the Board's history, only three formal complaints were made, while informal complaints in every form were presented. Some of these were settled by mere personal interview, and some without this amount of formality, and simply on the motion of the Commissioners. During the first three years every recommendation was complied with. In some cases an agreement was reached by the interested parties before the Board had had time to make an investigation. The Board testified, in its third annual Report,<sup>1</sup> that up to that time it had never felt the need of more power.

"Power is frequently quite as effective in reserve as in action. Should these corporations, at any future time, seem disposed to

<sup>1</sup> Page 108.

misinterpret this grace on the part of the State, it will be an easy matter to promptly exercise the power to enforce obedience.”<sup>1</sup>

The Commissioners’ conception of the law found expression in a case in November, 1881,<sup>2</sup> in which there was a demand for the construction of connecting tracks between two roads. There seemed to be a persistent determination on the part of one of the companies to ignore the requirements of the law, “the theory being that the managers of the road were the judges of the necessity of the connecting tracks, and that the law being founded in reason, they should not be required to obey its mandates, if there was not a demand for the interchange of cars at that station.” Secretary Morgan of the Board, in his letter to the superintendent of the Burlington, Cedar Rapids, and Northern said:—

“ It has been a favorite belief of this Board, as it has been of every other commission, that the simple power to investigate and recommend was quite sufficient to secure prompt compliance with the law. It has often been asked of its members if more power — power to enforce its recommendations — would not increase the efficiency of the Board and the commissioner system. The invariable answer has been that the best results had come from the exercise of mere advisory or recommendatory powers; that compliance without employing the usual powers of judicial execution was practically voluntary, and hence far more satisfactory to the public. The Board, therefore, wish to know if the Burlington, Cedar Rapids, and Northern proposes to put this most prominent feature of the commissioner system to such a test as will logically challenge the enactment of amendments supplying power to enforce execution of recommendations.”<sup>3</sup>

<sup>1</sup> Report, 1882, p. 4.

<sup>2</sup> Report, 1882, p. 422.

<sup>3</sup> J. C. Hannan, Goldfield, Ia. vs. C. & N. W. Ry. Co., Report, 882, p. 430.

That the railroads felt constrained to conform to the judgment of the Board, even though the latter had merely the power of recommendation, is shown in the reply of General Superintendent J. F. Barnard of the Kansas City, St. Joseph, and Council Bluffs Railroad to an adverse decision of the Commission:—

“I am instructed to say that the company, while most earnestly protesting against the decision, will comply with it. . . . I beg to say, in this connection, that I regret exceedingly not having presented to the Commission more fully than I did the whole of the argument which I think the company has upon its side of the matter. It is my belief that, upon a further hearing, the Commission could not fail to reach the conclusion that the rates charged by the railroad company are fair and reasonable; *but this case having been decided, I suppose there is no course left us but to comply.*”<sup>1</sup>

Major Anderson maintained that the leading purpose in the enactment of the Commissioner law was to regulate rail transportation.<sup>2</sup> It was not the intent of the legislature that the Commission should be merely an agency for the collection and arrangement of railroad statistics, nor a court for the adjustment of small claims between the people of Iowa and the railroads. The evils of the present system were to be investigated, and it was the business of the Board to take such steps as would do away with discrimination of all kinds between stations and between shippers. The Commission, in other words, was not to sit as a court to hear complaints presented to it, but was to take the initiative in investigation. Mr. Anderson’s essential proposition was, that that law is the best which least hampers

<sup>1</sup> Report, 1882, p. 535.

<sup>2</sup> Report, 1883, p. 52.

railroad management, and at the same time corrects abuses, and places all patrons of the road upon an equality. Competition without unjust discrimination was the Utopia sought for. Commissioner Coffin, in this same report,<sup>1</sup> presented a rather unique view of the duty of the Commissioners. He argued that they should act in the capacity of detectives, travelling secretly, and appearing suddenly at places without warning, in order to note the actions of railroad officials when the latter had put off their "company manners." "In this way, and only in this way, can a Board of Commissioners become able to give intelligent recommendations to railroad managers, to the authorities and law-making powers of the State."

The position of the Board upon the question of its powers and duties was expressed in a decision rendered Aug. 27, 1885, in a case against the Burlington, Cedar Rapids, and Northern for obstructing the navigation of an inland lake.<sup>2</sup> In this case the respondent contended that the Board had no jurisdiction concerning the controversy; that the question was one of maritime cognizance, and could be determined only by the Federal courts; to which the Board replied:—

"The parties are not before a court, but before a statutory board, created under a law which gives to it general supervision of railroads in the State so far as the security, convenience, and accommodation of the public are concerned. Their duties and powers are such that they may themselves institute inquiries about any branch of the subject, and they are authorized to

<sup>1</sup> Page 80.

<sup>2</sup> W. H. Innis et al. vs. B., C. R., & N. R. R. Co., Report, 1886, p. 474.

make orders in reference thereto which will, by proper proceeding, be enforced by the courts if found to be reasonable and just. The Commissioners believe that they are fully authorized by law to inquire into the facts of this case, and make such orders as to them seem just. It may be that respondents could be indicted as suggested by respondents' counsel, for obstructing navigation by means of the bridge in question; but it does not seem to us to follow from that proposition that there may not be other remedies to one aggrieved."

Although the recommendations of the Commission had in general been complied with, a few cases had occurred in which the Commission had been powerless to carry out its decrees. These cases were used by the advocates of a stronger commission to induce the legislature to strengthen the hands of the Board. In a law approved April 3, 1884, the General Assembly of Iowa increased the power of the Board by authorizing the certification to the attorney-general of the State for trial in the Circuit and District Courts of any case affecting public right, in which the recommendation of the Commission had been disregarded.<sup>1</sup> The Board interpreted this law strictly, and refused to certify all cases which, in their judgment, did not involve rights with which the public was concerned.

The Board explained their position upon the question in the following way :—

"There are two classes of cases which the Board have power to consider. First, that class which affects public right, which seeks to compel the railroad companies to perform a public duty, to fulfil a public obligation; and in such cases, when the Board has authority to deal therewith, the courts will enforce their

<sup>1</sup> See Appendix I. for text of the law.

orders. Second, it deals with a class of cases affecting private rights. In this class the Board occupies purely the position of an umpire or arbitrator. It may investigate, conclude, and recommend, but it cannot order. A failure to comply with its recommendations can only be reported by the Board to the Governor; and it must be left for the citizen himself to determine whether he shall seek his efficient remedy in court, or trust to the successful issue of an umpirage by the Board, which, if unsuccessful, will result in great delay of the prosecution of his action in the courts."<sup>1</sup>

To form a correct estimate of the success of the Advisory Commission is no easy task. The Commissioners in their reports repeatedly expressed themselves as gratified with the outcome of the experiment. They were, as a rule, thoroughly in sympathy with the underlying principle,—the reliance for enforcement of decrees upon the strength of public opinion, backed by the legislature and the courts which they insisted the railroads would hesitate to antagonize. The testimony of members of the Commission in the Cullom investigation at Des Moines, and the statement of those who were in sympathy with the principle, would lead one to the conclusion that the plan was working without friction, and that the Board possessed all the power necessary.

On the other hand, there was a great amount of bitter opposition to the weak form of Commission. Much of this was factious, and encouraged by inflammatory articles which appeared in the agricultural papers of the State. Still, there was a great deal of wholesome opposition, which was substantiated by sound reasoning.

<sup>1</sup> Report, 1884, p. 44.

Some of this opposition is found expressed in the testimony before the Cullom Committee, but the criticism which attracted the most attention throughout the State was that of Governor Larrabee, who took occasion, in testifying in a case of alleged discrimination, to express emphatically his views of the inadequacy of the existing system. Governor Larrabee had led the Granger movement in Iowa, had been placed in the gubernatorial chair by this element, and his criticisms are interesting as expressing the views of a faction which had been intemperate in its attitude upon the transportation question.

The case was filed on behalf of the Institute for Feeble Minded on Dec. 6, 1886, against the Chicago, Burlington, and Quincy,<sup>1</sup> in which it was claimed that the respondent charged a higher rate for a haul of coal from Cleveland, Ia., to Glenwood, than was charged from Cleveland to Council Bluffs, a case of unjust discrimination.

The decision of the Commissioners recommended a revision of coal rates. The company raised its rate for the long haul instead of lowering the rate for the short haul, and Governor Larrabee demanded a hearing to determine what constitutes a reasonable rate. During the hearing he took occasion to give his opinion as to the working of the Commission :—

“The law provides that you shall inquire for yourself, and ascertain whether railroad companies are violating the law or not. . . . I was thoroughly convinced that, if this law was enacted and lived up to, the people of the State would have no reason to complain. I believe there is ample law if lived up to.

<sup>1</sup> Larrabee vs. C., B., & Q., Report, 1887, p. 624.

*Unless it is complied with better than it has been in the last few years,* I am sorry to say I believe this Commission will have to go. It has not secured the confidence of the people. I say this with all respect to the Commission. We all recognize how easy it is to let things drift.

"I have found, during the last few months, that many persons have not made complaints for fear they would not receive proper attention and get a just decision. . . . It seems to me it is more especially the duty of the Commissioners to watch the grievances, and look up these violations of the law without waiting for complaints to be made. . . .

"I find, by going through these reports, that the Railway Commissioners congratulate themselves frankly on their success in having their decisions complied with by the railroad company. And they commend the companies for their cheerful compliance with their decisions, which is very pleasing to them ; but when you take into account the trifling character of a large proportion of the cases upon which this Commission has been called on to act, and when you compare it with \$36,000,000 that the railway companies are receiving for services rendered in this State, you will agree with me that the companies have not suffered greatly in complying with the rulings of this Board, although I commend them for their compliance with the rulings."

Governor Larrabee's criticisms were no doubt severe, and in some respects unwarranted, yet they contained much that was true. The members of the Board were enthusiastic over their idea and sanguine as to its workings, and their reports are decidedly optimistic in tone. There was a great deal of truth in the claim that the complaints presented were, as a rule, of a minor character, and the satisfactory disposal of these gave the appearance of entire success to the working of the plan. More important cases, which involved severe discriminations and the like, were not presented ; for the injured parties knew that the outcome could only be

a recommendation, which the Board had no power to enforce.

To be sure, the informality of procedure so strongly emphasized by the Board encouraged the presentation of claims, however small,—grievances which the shippers, rather than go to the trouble and expense of civil suit, would have suffered in silence but for the existence of the Commission. Moreover, the number of minor complaints was increased by the fact that many persons used the Commission as a club to bring the railroads to terms.<sup>1</sup> A complaint would be presented to the Board, for the purpose of frightening a railroad, and the Board would find upon investigation that the cause for grievance had been removed. These complaints very frequently had no foundation; and the complainant, when asked for proof, would respond by abusing the Commission, and charging it with being in league with the railroads. All such annoyances added to the difficulties of carrying out the Commissioner law, and gave color to the idea that the Board was ineffective.

Furthermore, many of the complaints presented involved questions of interstate commerce over which the Board had no control. Many of the people, and those especially who were opposed to the commission experiment, were not careful to fix the limits of the Board's jurisdiction; and when the latter failed to adjudicate the cases which were beyond their control, these persons were ready with their criticisms.

The most important result of the Commissioners' work is found in comparing the attitude of the people toward railroads in 1887 with that in 1874. A careful

<sup>1</sup> Report, 1885, p. 511.

survey of this period evidences the fact that the people had been thinking upon the question, and that careful study and contemplation had resulted in a gratifying conservatism and a growth in intelligence. The crude notions of the Granger period had been superseded by the views of men who had studied the question from more than one point of view. The people had become more tolerant in their bearing, more temperate in their utterances, and more inclined to discuss the question dispassionately. The Commission had performed a great service in removing, to a considerable extent, the spirit of mutual distrust prevalent in the early seventies.

The Board was very successful in settling questions of minor importance in which it was necessary to remove misunderstandings, or call attention of the carriers to matters of complaint, the justice of which was so patent that a simple reminder secured relief. In some notable instances, the Board was remarkably successful in questions of great importance.

But it failed just where control was most needed. It was powerless to check that crying evil of railroad transportation, discrimination. The case of the jobbers of the three cities already mentioned<sup>1</sup> showed a dissatisfaction with rates, and the condition of things had not improved afterward. Of course, the fact that many of the discriminations involved interstate commerce<sup>2</sup> made the

<sup>1</sup> See *ante*, p. 52.

<sup>2</sup> "From 18 to 24 per cent is the extreme of our local business. It has never exceeded, since we have had anything to do with it, 24 per cent; and it has never been lower than 18 per cent; and, say, 80 per cent of our business has been what we would call through business." —Testimony of Commissioner Dey before Cullom Committee.

Board powerless under any circumstances, but many of the evils, it was thought, could be remedied if more authority were given to the Board. Hence arose the agitation which resulted in conferring upon the Board of Railroad Commissioners greater powers.

P A R T   I I I.

*COMMISSION WITH POWER.*



## PART III.

### COMMISSION WITH POWER.

---

#### CHAPTER I.

##### THE COMMISSIONER LAW.

THE Larabee case attracted wide attention; and it was expected that the short haul, or Glenwood rate, would be lowered. Instead of that, the company made the mistake of raising the long haul to Council Bluffs. It is quite probable that this action of the railroads, which was afterwards declared to be a blunder, hastened the step which the people were soon to take for a more efficient control of the transportation industry.

The public had become thoroughly aroused through the continued oppressions of the railroads; and seeing the opportunity before them of gaining control of the legislature, which they maintained had previously been dominated by railroad influence, they bent all their energies to the accomplishment of their purpose. A meeting of Iowa manufacturers and jobbers and other shippers was held at Des Moines, Jan. 25, 1888, to consult regarding railroad legislation. Resolutions were adopted advocating laws which should empower the Railroad Commission to control all freight and passen-

ger tariffs within the limits of the State. The desideratum of the manufacturers and jobbers was to be placed on a relative equality with other markets; that is, that the car-load rate from outside to the Iowa jobber, plus the less than car-load rate from this point to the consumer, should be equal to, or should not much exceed, the less than car-load rate from the Eastern point to the consumer direct. Other things being equal, the local dealer would prefer to do business near home, and for that reason would pay a slightly higher rate to an Iowa jobber than to an Eastern jobber, but he could not afford to pay the local rates then in force.

The Dubuque shippers issued an address in which they declared that all they desired was "a fair chance to compete for business." They prepared elaborate tables, showing the discrimination against the Dubuque, and in favor of the Eastern, dealer.<sup>1</sup>

<sup>1</sup> The following is an example of the tables prepared:—

CHICAGO, MILWAUKEE, AND ST. PAUL RAILROAD.

Distance from Chicago.	Distance from Dubuque.		Rate from Chicago to town named.	Rate from Dubuque.		Chicago to Dubuque.		Rate, Chicago to Dubuque plus Rate to towns named.	Difference against Dubuque per cwt.	
				1st	4th	1st	4th		1st	4th
229	44	Clayton . . .	45	17	24	13	40	15	64	28
271	86	Western Union . . .	50	20	35	13	40	15	75	28
300	115	Cresco . . .	50	20	37	13	40	15	77	28
376	191	Garner . . .	68	27	48	20	40	15	88	35
455	271	Spencer . . .	75	30	55	25	40	15	95	40
481	298	Sanborn . . .	75	30	55	25	40	15	95	40
326	229	Maxwell . . .	61	24	47	18	40	15	87	33
417	320	Manning . . .	75	30	55	25	40	15	95	40

Average as against Dubuque, per cwt., — 1st, 22½¢; 2d, 9½¢.

The *Dubuque Herald* of Feb. 12, 1888, expresses the desires of the shippers as follows:—

"The great thing that is needed by the Dubuque merchants is that they may be enabled to ship goods out. The bill favored by them is one which would alike benefit every city in the State. The principle of the bill is that the sum of two locals should approximate the through rate. The difference between these two rates should be the terminal or transfer charge. One of the equities of the terminal charge is that time is lost to the railroad company while a car is standing on the track for the purpose of loading or unloading freight. If goods are shipped to a jobber at Dubuque, and these same goods are afterwards shipped to Dyersville, the railroad is entitled to some compensation for the time lost in loading or unloading. What the Dubuque shipper wants is this: if the rate on a certain class of goods from Chicago to Dubuque is 40 cents, another rate from Chicago to Dyersville is 60 cents, then the rate from Dubuque to Dyersville should be 20 cents plus a certain sum, 3 to 7 cents, for a terminal charge. Under such conditions Dubuque would be placed upon an equal footing with Chicago, and the railroads would make the same money, and in addition would receive compensation for transfer."

The railroads attributed the existing condition of Iowa industries, and the desire of jobbers for a change in the law, to the passage of the interstate commerce law. "In 1887 the Congress of the United States passed the interstate commerce law, the effect of which was to considerably reduce the interstate rates, and also to prohibit the making of special rates, which had previously been granted freely, and as we think properly, to the manufacturing enterprises of the State. This law had the effect of unsettling the conditions; and nearly everybody concerned was injured by it, at least temporarily. The manufacturers were crip-

pled, and in some cases forced to move out of the State.”<sup>1</sup>

This has always been the claim of the railroad companies, but in point of fact the jobbing interests had been given their blow two years before the interstate commerce Act was passed.<sup>2</sup>

The abolition of jobbers' rates in 1885, at the instigation of Chicago jobbers, and in response to the opposition of a large element in Iowa, followed by the attempt to abolish car-load rates, had forced many of the jobbers for self-protection to leave the State. They could not do business without the equalizing rates which would place them on a basis of effective competition with outside jobbers.

Governor Larrabee's inaugural of Jan. 12, and his message to the twenty-second General Assembly, voiced the popular sentiment on the question. In the latter he advocated the entire abolition of the pass system, the establishment of passenger rates by law, the payment of the salaries of the Railroad Commissioners by the State and not by assessment upon the railroads, the requirement of safety appliances, and better regulations regarding Sunday trains. He intimated that a law making the Commissioners elective by the people would meet with his approval.

The Assembly, which had been elected upon the railroad issue and possessed an overwhelming majority in favor of more stringent measures, immediately set to work. The leadership of the radical forces

<sup>1</sup> Address, E. P. Ripley, 3d, Vice-Pres. C., M., & St. P., at hearing of Railroad Commission, Aug. 21, 1894.

<sup>2</sup> See *ante*, p. 68, also Report, 1885, p. 535.

fell to shrewd and skilful men, who understood the railroad methods of influencing legislation; and an irresistible majority, thoroughly organized, was soon arrayed against the railroad lobby which besieged the Capitol. The debates during the month of March were the strongest in the history of the State. The railroads appeared continually before the committees of House and Senate in protest against the passage of any measure which should fix rates. They recognized it to be the duty of the State to do away with discrimination, and to see to it that the amount of compensation received be neither unreasonable nor extortionate. "With the exercise of this much power, the railways should be left free to manage their own affairs, subject to the laws of trade and commerce." They declared, with an implied threat, that, if rates were cut down as the legislature proposed, the general usefulness of the roads would be impaired, as the improvements could not be kept up, and the wear and tear of every-day use could not be remedied. Wages would be lowered, and many employees would lose their places. Trains would be taken off, and the general service curtailed in every way. Their testimony before the Senate Railway Committee demonstrated the fact that railroad charges were not based upon a single ordinary business principle. The railroads admitted that cost or present value of the road was not taken into account, and explained that charges were made to protect this or that business in St. Paul, St. Louis, or Chicago, without reference to cost of road or service.<sup>1</sup>

<sup>1</sup> Speech of Senator Young, reported in *Iowa State Register*, March 28, 1888.

The argument upon which they laid most stress was, that, if they should submit to the proposed measures, they would be forced to submit to the same rates over the entire Northwest. Other States would follow Iowa's example. "When that time comes, in our judgment, the bankruptcy of all the roads in the Northwest becomes inevitable."

By a sharp method of procedure, the House proposed an iniquitous piece of legislation to draw the fire of the opposition; and the substitute for this measure, which became the railroad law of Iowa, April 5, 1888, was passed as the lesser of two evils, with the acquiescence, if not with the avowed consent, of the railroads.

Chapter 28 of the laws of the Twenty-second General Assembly<sup>1</sup> was entitled "An Act to regulate Railroad Corporations and other Common Carriers in this State and to increase the Powers and further define the Duties of the Board of Railroad Commissioners in relation to the same, and to prevent and punish Extortion and Unjust Discrimination in the Rates charged for the Transportation of Passengers and Freights on Railroads in this State and to prescribe a Mode of Procedure and Rules of Evidence in relation thereto, and to repeal Section 11 of Chapter 77 of the Acts of the Seventeenth General Assembly in relation to the Board of Railroad Commissioners and all Laws in Force in Direct Conflict with the Provisions of this Act."

The law applied to all common carriers engaged in transportation by railroad within the State, the term "railroad" to include all bridges and ferries used in connection, and also any road operated or owned under

<sup>1</sup> Report, 1887, p. 905.

contract, agreement, or lease. All charges must be reasonable and just, and unreasonable charges were prohibited. Special rebates and drawbacks were prohibited, but this did not prevent the charging of a less rate per 100 lbs. in car-loads than was charged for freight in less than car-load lots.

It was declared unlawful to give any preference to any particular person or locality. The companies were required to furnish facilities for the exchange of freight and passengers between their lines, and to switch and transfer cars for loading or unloading at the direction of the Board. It was declared unlawful to charge any greater compensation in the aggregate for the transportation of passengers or property for a shorter than for a longer distance, all or any portion of the shorter haul being included within the longer. Pooling of all kinds was prohibited. Every common carrier was required to keep posted schedules of its charges, copies of which, together with all joint agreements of other roads, were to be placed in the hands of the Board, ten days' public notice to precede an advance in rates. Failure to publish rates was an offence cognizable in the District Court, and rendered the company liable to a fine of \$500 for each day's failure to comply. The breaking of a continuous carriage of freight was unlawful, unless necessary. Any person injured might complain to the Board, or bring suit in court, but could not pursue both remedies in the same case. The court might compel any officer of a corporation to testify, or to produce books and papers, the claim that the matter presented might tend to incriminate him not being sufficient excuse for not testifying; but such evidence should not be used against

such person in any way on the trial of any criminal proceeding. Penalties were prescribed for violations of the Act.

The Board was empowered to inquire into the management of the business of all common carriers, with the power to require the papers and books of the companies, and to compel testimony. Any person, firm, corporation, or association might make complaint of failure to perform duties by railroad companies, which should be investigated; and no complaint should at any time be dismissed because of the absence of direct damage to the complainant.

The Board was directed to make a schedule and classification of reasonable maximum rates, such schedule to be *prima facie* evidence in court that the rates were reasonable. Hearing should be given upon complaints as to the reasonableness of rates, the lowest rates charged by any railroad company for substantially the same kind of service being accepted as *prima facie* evidence of a reasonable rate for the services under investigation, the operations of the railroad in question outside the State, or in interstate commerce, and the charges therefor, being taken into account in determining the reasonableness of the rate complained of. The Commissioners might add to the showing any information they might then have, or could secure from any source whatsoever. The rate per 100 lbs. should be the same for all classes of freight, for like distances, to all persons shipping in less than car-load lots, and the rate per 100 lbs. for all shippers in car-load lots should be the same for same distances with the same class of freight. Penalties were prescribed for extortion, unjust discrimination

as to rates, classifications, and the use of cars. Exceptions to the law were made in the case of the United States or State governments, charitable institutions, State fair exhibits, employees and their families, ministers of religion, and persons in charge of live-stock. The issuance of mileage and excursion tickets was permitted, as well as the exchange of courtesies between roads. The Railroad Commissioners and secretary, and other agents whose services they might require, were given free transportation.<sup>1</sup>

The methods of procedure to be followed by the Board in cases arising under the Act were three in number. The first method was followed in case of civil suit for damages sustained by an individual at the hands of railroads.<sup>2</sup> In such case, persons injured might make complaint to the Commissioners, or bring suit for the recovery of damages in any court of competent jurisdiction; but both methods could not be resorted to. A common carrier, violating the provisions of the Act, was liable to the person injured for three times the amount of damages sustained, with costs and reasonable attorney's fees; but written demand on the common carrier for the damages should be made before suit was brought. The court was empowered to summon witnesses, and order the production of books and papers.

The second method of procedure related to proceedings in equity. The first case under this method arose when a carrier refused to publish its schedule of rates as provided for in Sect. 7, in which case a writ of mandamus was issued by the District Court upon the petition,

<sup>1</sup> See Appendix I. for text of the law.

<sup>2</sup> Sects. 9 and 10 of the Act.

without bond, of the Commissioners, failure to comply with the writ being punishable as contempt. The second case arose during an investigation by the Commission, upon refusal to obey a subpoena, or other proper process, by a carrier. In such case any court of the State within the jurisdiction might issue an order requiring attendance and the production of papers, refusal to obey being punishable as contempt. The third case under the method of equitable procedure is to be found in Sects. 13, 14, 15, and 16 of the Act. Sect. 13 provides that any person or association may enter complaint with the Board of Commissioners. The Commissioners shall forward the complaint to the carrier complained of. If the carrier does not satisfy the complainant within a reasonable time, an investigation is to be made by the Board. Sect. 14 provides that the result of the investigation shall be drawn up in writing, and forwarded to the complainant and the carrier complained of, the report to be *prima facie* evidence in court of the facts found. Sect. 15 provides that in case the Commissioners are satisfied that anything is being done in violation of the law by the common carrier, a copy of their report is to be furnished the carrier, with a notice to desist from such violation. By the terms of Sect. 16, in case the carrier refuses or neglects to obey the order, the Commissioners are directed to apply in a summary way by petition to the District or Superior Court of the county; and the Court may hear the complaint upon short notice without the formal pleadings applicable to ordinary suits in equity, and may direct such persons to appear as are necessary to a full hearing of the case, the report of the Commissioners to be *prima facie* evidence

of the matter stated by them. If the petition of the Commissioners is sustained, the Court may issue a writ of injunction, to be followed, if necessary, by writs of attachment, a fine of one thousand dollars being levied for each day that the carrier shall fail to obey the injunction. The usual right of appeal to the Supreme Court is retained, "but no appeal to the Supreme Court shall operate to stay or supersede the order of the Court or the execution of any writ or process thereon; and such Court may in every such matter order the payment of such costs and attorney and counsel fee as shall be deemed reasonable."

The third method of procedure related to criminal proceedings in cases of direct violations of law by the carriers. Here the Board was directed to institute suit on behalf of the State against the carriers in any court of competent jurisdiction for the collection of the penalties imposed by the Act, the attorney-general conducting the suit, and the court being empowered in its discretion to give such suits preference over all business except criminal cases. Such fines might be imposed in a criminal prosecution by indictment, or in a civil action by ordinary proceeding instituted in the name of the State of Iowa.<sup>1</sup>

In all cases not otherwise particularly prescribed by law, the Board might conduct its cases in such manner as would best conduce to the proper despatch of business and to the ends of justice.<sup>2</sup> The Board was given power to amend its order of proceedings and notices with the limitation that they should conform as nearly as possible to those in use in the courts of the State.

<sup>1</sup> Sects. 26, 27, 28, 11, of the Act.

<sup>2</sup> Sect. 21.

Any party might appear before the Board in person or by attorney, and every Commissioner should have the right to administer oaths and affirmations in any proceeding pending before the Board.

Chapter 29 changed the manner of choosing railroad Commissioners from appointment by the Governor, with the advice and consent of the Executive Council, to election by the citizens of the State. No person in any way pecuniarily interested in a railroad company was eligible. Vacancies were filled through appointment by the Governor.

This last chapter was adopted in face of the opposition of those who feared that the election of Commissioners by the people would give the railroads the opportunity long sought for, of entering directly and effectively into politics. Later developments have proved that these fears were not unfounded.

## CHAPTER II.

*THE LAW IN PRACTICE.*

THE arduous duty now devolved upon the Board to establish a schedule of maximum rates, and arrange a classification. In the establishment of a schedule, the Commissioners took into account the former rates which the railroads had themselves imposed, including special and competitive rates, those established by agreement between roads, and the rates of adjoining States, especially those charged by the roads which had mileage in Iowa. They found a want of uniformity and an absence of any direct or governing principle in the tariffs of other States. The object of the Commissioners was to get something tangible as a basis, and then, with the assistance of the railroads, adjust the rates satisfactorily. Such rates were to be established as would benefit the business interests of the State, and at the same time furnish to the roads a reasonable compensation.

The request of the jobbers that the sum of the car-load rate from the Eastern point to the jobber, and the less than car-load rates from the jobber to the consumer, should not exceed, or not materially exceed, the less than car-load rate from the Eastern point to the consumer direct, was taken into consideration by the Commissioners in preparing the schedule of maximum rates; and while the request was in large part granted, the Board did not think it practicable to do this to the

extent that the jobbers desired. The schedules were submitted to the General Freight Agents, in conformity to the law, and at their request the rate for 300 miles was made to conform with the Missouri River rates. Requests from officers for further modifications were denied; the Board holding that the rates should go into effect on July 5, 1888, in accordance with official notice, and that changes, if any, should be taken up item by item at fixed conferences, at which the shipping and carrying interests should be given full hearing. This was not satisfactory to the roads; and a suit was brought June 28, 1888, before Judge Brewer of the United States District Court, by the Chicago and Northwestern; the Chicago, Milwaukee, and St. Paul, and the Chicago, Burlington, and Quincy bringing similar suits, to restrain the Commissioners from putting the schedule into effect, the claim being that the State alone had the power to fix rates, and that this power could not be delegated. Judge Brewer held:<sup>2</sup> "First, that courts ought not to declare a statute unconstitutional unless it is clearly so. Second, there is no inherent vice in the delegation of such power, the vital question to shipper and carrier being that the rate should be reasonable. Third, while the power to fix rates is legislative, yet the demarcation between legislative and executive is not always readily discerned; the legislature frequently establishes rules and principles, leaving their execution and details to others. Fourth, in view of constantly changing conditions, justice is more

<sup>1</sup> Testimony of W. W. Ainsworth, secretary, in published volume of transcript testimony taken before the Board in case of C., R. I., & P. R. R. vs. Commissioners, District Court, Johnson County, Ia.

<sup>2</sup> Report, 1888, p. 36.

likely to be reached by the body that is constantly in session than by one that convenes only at stated periods." It was held that the legislature can delegate to the Commission the power to fix rates, with the limitation, however, that it was not intended that the legislature have the power to fix unreasonable rates, or to delegate that power; to hold otherwise he would regard as confiscation. He held that if the rates gave compensation, however small, to the owners of the property, the courts had no power to interfere. From testimony before him, the conclusion was reached that the rates fixed by the Commissioners might not give return on the capital invested, and the injunction was therefore granted.

Judge Fairall, of the District Court at Iowa City, before whom suit was brought by the Chicago, Rock Island, and Pacific, assumed that the courts had authority to review the Commissioners' rates; and that the State had authority not only to fix a schedule of rates, but to delegate that power. To require a common carrier to transport goods at a rate which was not compensatory was to take property without due process of law. From the pleadings he judged that the Commissioners' rates were so low as not to pay fixed charges and operating expenses, and therefore granted the injunction.

The Board maintained that it had never been the intention to fix rates that were not compensatory; that the rates fixed were certainly higher than the roads had voluntarily fixed for a large portion of their traffic. All localities and all persons were required to be treated alike under the law. The railroads claimed that the wholesalers and manufacturers desired special rates in

order to compete satisfactorily with St. Louis and Chicago; but if all rates were made as low as these special rates, business could be done only at a loss. A law such as this, which required uniform rates, they said, was entirely unfitted to the commercial and industrial wants of the Iowa people. The rates, they said, were made neither as low as the special rates, nor as high as those which they had arranged by schedule on May 10, made to compensate themselves for the special rates given to jobbers. With the general position that special rates should be given to jobbers, the Board had agreed previous to the passage of the new law.

May 10, the day the new law went into effect, the Iowa lines withdrew all joint tariffs, special rates, and terminal tariffs, and put in a distance tariff, by which the rates up to 100 miles were higher than the Granger rates of 1874, and higher than the Commissioner-agreed rates of April 21, 1879.

On Aug. 30, 1888, the shippers of Davenport, Ia., filed a complaint<sup>1</sup> against the Chicago, Rock Island, and Pacific, the Chicago, Milwaukee, and St. Paul, the Burlington, Cedar Rapids, and Northern, and Minneapolis and St. Louis railroads, charging that they had established schedules of rates that were unreasonably high and unreasonably discriminating, and had conspired to defeat the operation of the new law passed April 5, 1888. It was charged that on May 10, the day on which the new law went into operation, the railroads issued new schedules by which rates in Iowa were raised all the way from 8 per cent to 25 per cent, and in some cases the increase was greater. On Aug. 13 the respondent

<sup>1</sup> Report, 1888, p. 752.

had put a new tariff into operation which had reduced the enhanced rates only about 6½ per cent. Discriminations were being steadily practised against Iowa dealers and in favor of Chicago dealers and interstate shipments; and the Davenport shippers, in order to hold the business at all, were obliged to dray their goods across the river to Rock Island and take advantage of the interstate rates.<sup>1</sup> The railroads, on the other hand, claimed that the schedule was adopted for self-protection, and that the tariff of May 10 was not unreasonable, for it did not leave more than a fair return on the capital invested.

The Commissioners asserted that the evidence on the question of discrimination in interstate rates against Iowa shippers developed a system of rates so unjust as to be a serious blow at the business prosperity of those thus engaged within the State. The proof of discrimination was confined entirely to a comparison between State and interstate business; and while the Commissioners were unable to grant relief against interstate discrimination, they were of the opinion that a fair reduction of local rates within the State was the proper remedy to protect Iowa's interests against the injustice to which they were subject from the discriminating interstate rates.

Complaints similar to that of the Davenport shippers were entered by the shippers of Burlington and Dubuque on Sept. 6 and Sept. 18. Both of these complaints were sustained on the charge of discrimination and unreasonable rates; and, as in the case of the Davenport

<sup>1</sup> The rate from Chicago to the Iowa points direct, as shown by abundance of evidence submitted, was made almost as low as the rate from Davenport to the Iowa point; and the Davenport dealer had, in addition, to pay his car-load rate from Chicago.

jobbers, schedules of maximum charges for local business were prepared by the Board.

These schedules were but a reiteration of those first promulgated by the Commission; but, whereas the Board had used the Illinois classification in the rates first issued, it now used the Western classification, and by this action the rates were taken out from under the operation of the temporary injunctions issued by Judge Brewer and Judge Fairall.

On Nov. 27, 1888, upon application of the Chicago, Milwaukee, and St. Paul, and Chicago, Burlington and Quincy Railroad Companies, an injunction was issued restraining the Commissioners from acting under these new rates, pending a hearing at St. Paul on Dec. 11. Following this hearing, on Feb. 2, 1889, Judge Brewer declined to grant a permanent injunction.<sup>1</sup> With regard to the claim of the railroads that the Commissioners did not have power under the statute to establish a full schedule of rates for the complainants, Judge Brewer declared that the Board were simply obeying the mandate of the legislature in proceeding on their own motion to establish schedules of rates for all railroads. "Power of classification unquestionably exists; that is conceded. Power to determine upon complaint whether any charge or series of charges, by a particular railroad company, is reasonable or not cannot be questioned; and power to declare that determination shall, as to the particular road, be a rule for the future, would seem to follow." As to the other charge of the railroads, that the schedule announced was unjust and unreasonable, Judge Brewer said:—

<sup>1</sup> Report, 1889, p. 31.

"The officers of the railroad company declare that the rates fixed by the Commission will so reduce the income that it will not suffice to pay the running expenses of the road and the interest on its bonded debt, leaving nothing for dividends to its stockholders. The Railroad Commissioners assert that their schedule was formed to produce eight per cent on the value of the road, after paying costs of maintenance and running expenses. Which view is the correct one, it is impossible to decide from the evidence submitted. There is, however, a conclusive way, and it seems to me it is the only one by which this controversy can be settled, and that is by experiment. It can soon be settled which is right—the railroad company's officers or the Railroad Commission—in their view of the effect of the Commission's tariff of rates, by allowing the tariff to go into operation. Where the effect of the rates is doubtful, with the probability that they will prove compensatory, and the amount of business to be affected thereby is comparatively small, I think the courts may well wait for the test of experience. Influenced by these considerations, I am led to refuse the preliminary injunctions, and to set aside the restraining order heretofore entered."

Feb. 4, 1889, two days after the decision of Judge Brewer, President Perkins of the Chicago, Burlington, and Quincy addressed a letter to the Commissioners, notifying them that his road would adopt the Commissioners' rates. The letter is commendable in tone and spirit, and is herewith inserted in full:<sup>1</sup>—

CHICAGO, BURLINGTON, AND QUINCY RAILROAD COMPANY.

BURLINGTON, IOWA, February 4, 1889.

W. W. AINSWORTH, Esq., Secretary Iowa Railroad Commissioners, Des Moines, Iowa.

*Dear Sir,—I beg to inform you that, while we most respectfully protest that the Commissioners' schedules are unjust to us, it is the intention of this company, pending further hearing, to comply at once with the decision of Judge Brewer, filed with the*

<sup>1</sup> Report, 1889, p. 29.

clerk of the United States District Court on Saturday, Feb. 2. We shall print schedule without delay, and shall refund any over-charges since the filing of the decision.

There has been a disposition in some quarters to criticise the railroad managers because they have felt it to be their duty to the owners of property to ask the court to expound the statute; but I am satisfied this has grown out of a misunderstanding of the situation. It seems to be not only proper, but of the most serious importance to the State, as well as to the railroads, that the law, in a matter of such very great consequences to all of us, should be interpreted by the highest tribunals. The present railroad law in this State very vitally affects a great many millions of dollars worth of property, honestly invested, and as much entitled to be protected as property of any other character. The people of the State are themselves owners of property, and know that they cannot strike a blow at the railroads without affecting all values. I have lived thirty years in Iowa; and while I know it is not the desire or intention of the people to deal unjustly with the railroads, or to make laws likely to prevent capital from coming here, not only for railroad construction, but for improvements of various kinds, I know also that the subject of railroad transportation is an intricate and difficult one, and that few persons have been able to give it sufficient consideration to understand, as we do, the very serious nature of the controversy which has been going on.

We understand the effect of Judge Brewer's decision to be, that the last schedules fixed by the Commissioners should be complied with by the railroads pending further hearing in the courts; and while we hasten to act accordingly, we desire to express the conviction that the rates established are inadequate, and the hope that we may have the co-operation of the Commissioners in the further hearing, and the final and satisfactory settlement of this whole question.

Very respectfully,

C. E. PERKINS, *President.*

The other roads followed the example of the Chicago Burlington, and Quincy, and all were soon operating

under the Commissioners' schedule. With regard to the temporary writs of injunction sued out before Judge Brewer on June 28, 1888,<sup>1</sup> an arrangement was made by which all suits pending between the railroads and the Commissioners were dismissed. The Commissioners waived all damages, and ordered the attorney-general to dismiss, at the cost of the State, all suits for penalty pending between the State and the railroad companies. From the injunction granted to the Chicago, Rock Island, and Pacific by Judge Fairall, an appeal was taken to the Supreme Court of Iowa, which was argued and submitted at the October term of 1888; but, before an opinion was filed, the case in the court below was dismissed by plaintiff, thus ending the matter. For some time after the adoption of the schedules, the railroads endeavored, by the various means with which railroad managers are familiar, to render the new law unpopular. They reduced their train service at various points, and discharged numbers of employees; but they found later that increased business, due to stable rates, compelled the restoration of the service to its former efficiency.<sup>2</sup>

<sup>1</sup> Report, 1889, p. 35.

<sup>2</sup> On Aug. 2, 1894, the railroads operating under Iowa rates filed a petition with the Board, asking for a general rise in rates, on the ground that their remuneration for local hauls in Iowa was less than in adjoining States, and that they were losing money on Iowa business. A general hearing was held on Aug. 21, in which the railroads were given full opportunity to present their case. On Sept. 18 the shippers were given an opportunity to testify. The general claim of the shippers was that the present Iowa rates had added greatly to the earnings of the railroads of the State, and that an increase in local rates, by opening a door for the entrance of the Chicago jobbers, would prove disastrous to Iowa industry. The railroads relied mainly

upon the claim that Iowa rates were lower than those of adjoining States ; but the shippers asserted, and it was conceded by the petitioners, that the Illinois rates, upon which the railroads depended for their main argument, were not lived up to in the majority of cases, nor were they in any other State with which a comparison of rates was asked by the petitioners; while all the roads charged the maximum rates on local business in Iowa. Moreover, Iowa's prosperity could not be gauged by that of any other State. The Board ordered the filing by the railroads of duly authenticated tariffs of rates, including classifications, in force in Michigan, Wisconsin, Illinois, Minnesota, and the Dakotas, under which business had been done ; also all interstate tariffs bearing upon the question. After considerable delay, the railroads complied, and a final hearing was held on Dec. 27, 1894. The majority of the Board held that the petitioners did not establish the truth of their allegations that the rates were inadequate and unremunerative, and refused to revise the schedule. Commissioner Dey filed a dissenting opinion, holding that the local business of Iowa did not bear its proportion of the cost of operation and that local rates should be advanced. (See Report, 1894, p. 184.) The hearings in this case were marked by a spirit of forbearance and courtesy which evidenced a growth of conservatism toward railroad matters. The majority of the shippers present were jobbers and manufacturers. It was noticeable that the farming-class took but little interest in the matter.

## CHAPTER III.

DISCRIMINATION.

THE new law, in its position upon the question of discrimination, was a radical departure from the original law and the interpretation put upon it by the Commission. The old law prohibited unjust discrimination, but recognized that there could be such a thing as just discrimination. The new law, on the other hand, insisted upon absolute equality. That the Board interpreted the law in this way, though it was out of harmony with their former rulings, was shown in a case filed soon after the statute went into effect.<sup>1</sup> It was charged by complainants that they were obliged to pay a higher rate on goods shipped from Keokuk and consigned to Moravia over the Keokuk and Western than was charged from Keokuk to Moravia over the Keokuk and Western on goods consigned to points beyond Moravia on the Chicago, Milwaukee, and St. Paul. The Keokuk and Western replied that the lower rate was in the nature of a through rate; that the Chicago, Milwaukee, and St. Paul charged them full local rates from Moravia to points along their line, and refused to prorate; and that a lower rate to Moravia was necessary in order to hold the business. The Commissioners held that the rate was not a joint rate, for this required the consent of both parties, and the State had not granted

<sup>1</sup> Report, 1888, p. 739, Merrill & Company vs. K. & W. Ry.

the authority to require joint rates. It was evident that the Moravia merchants were charged more for the consignment of freight, "the same distance over the same line of road," than the merchants beyond Moravia were charged, which was prohibited by Sect. 24 of the Act. The Commissioners said:—

"This fact is declared to be *prima facie* evidence of unjust discrimination, and competition is especially declared to be no excuse for the difference. The effect, and we believe the design and declared purpose, of the framers of the law in cases of this kind, was to exclude the Keokuk and Western from points beyond Moravia, unless they were willing to make the same rates to everybody at Moravia or points nearer Keokuk. The intent of the law seemed to be to exclude competition, and give the business to the railroad and the distributing centres that were the nearest, and could perform the service at the lowest cost. If Ottumwa was the most accessible point, Keokuk must be shut out of the country, unless all the business on the Keokuk and Western was done at the lowest rate given on less. It is not the province of this Board to criticise the law, nor to determine whether excluding competition as it does is for the best interest of the public. We can only say that, in our judgment, the law does this, and that the differential in the rates is prohibited by the provisions of the law."

An interesting case of alleged discrimination was filed April 26, 1889, by the Diamond Jo line of steamers against the Chicago, Burlington, and Quincy Railroad Company.<sup>1</sup> The line of steamers had been plying since 1879 between St. Paul, Minneapolis, and St. Louis, and had transferred freight from one point to another in Iowa to connect with various railroads for shipment to the interior. The complaint alleged that prior to March

<sup>1</sup> Report, 1889, p. 1074.

30, 1889, the bills for back charges on freight consigned from points on the river to points in the interior had been paid by the respondent upon delivery of the goods by the Diamond Jo Company at Burlington. On the day mentioned, complainant was notified that no more consignments would be accepted unless these charges were paid in advance, and since then respondent had several times refused consignments offered. The complainant asserted that the refusal to receive and forward its freight, while performing the service for other carriers, was a discrimination. The railroads defended its action thus: —

"The rates made by the boats between St. Louis and Burlington, added to the very low rates current from Burlington to stations in Iowa, have the effect of reducing our interstate rates, both from St. Louis and from Chicago. We know of no reason why we should be expected to form a line of transportation with the boats, against our own interests, or why we should be expected to advance money on shipments delivered us by them, or forward the property unless prepaid."

The Commissioners sustained the complaint, and ordered the Chicago, Burlington, and Quincy to treat all carriers alike. At a rehearing of the case upon July 30, the respondents set forth the plea that the Commission had no jurisdiction, because all of the shipments were of an interstate character; that shipments which originated and terminated within the State, but passed out of the State in transit, were under the exclusive control of Congress; that the Diamond Jo line of steamers touched the State of Illinois in passing, and plied upon a navigable stream over which Congress had exclusive jurisdiction. They admitted that there

was discrimination in their refusal to receive freight, but denied that it was unjust or unlawful. Advanced charges were lawful, and a lawful act could not be an unlawful discrimination. As to the first question, concerning the interstate character of the shipment, the Commissioners were governed by the law creating them, which in its first section declared that the Act applied to "shipments of property made from any point within the State to any point within the State, whether the transportation of the same shall be wholly within this State, or partly within this State and an adjoining State or States." Moreover, there was no attempt on the part of the Commissioners to control the shipment while in transit, but merely to see that discrimination was not practised after it had been delivered within the State for shipment. The Commissioners declined to reverse their original decision.

A case of discrimination, involving to some extent the question of interstate shipments, was filed with the Board May 8, 1890.<sup>1</sup> It was a complaint of Burlington shippers against the Burlington, Cedar Rapids, and Northern Railroad, that the latter was charging a less rate in the aggregate for shipments from St. Louis to points on its lines in Iowa than was charged over the same line to the same places for shipments from Burlington. The Commissioners held:—

"That the interstate rates in force on the line of respondent, and lines with which it has joint traffic arrangements, are unjustly discriminating against Iowa's interest, and in favor of shippers outside of the State; rates that in the aggregate are much lower on the long haul than on the short, by which St.

<sup>1</sup> Report, 1890, p. 869.

Louis merchants are enabled to transport goods into Iowa, double the distance, at lower rates than from Burlington to points within the State, whereby Iowa shippers are placed at a disadvantage, their business crippled, and a heavy loss entailed; that such discrimination is illegal, unjustly discriminating, and against public policy. . . .

"It is the opinion of the Commissioners that, when the inter-state rates of any of the railways running into Iowa are lower from points without the State to points within the State, than the local rate within the State to the same points on the same line of railway, that such discriminations are illegal, and contrary to public policy, and are hereby forbidden."

A case of discrimination, in which the Farmers' Alliance of Winnebago was a party, was filed Dec. 31, 1890.<sup>1</sup> The Alliance complained that the receiver of the Minneapolis and St. Louis Railway had refused them permission to erect a coal-house upon their grounds at Forest City, while the privilege had been granted to two other dealers; that it was a discrimination against them to be obliged to transfer their coal from the cars to storage-houses beyond the grounds, when other dealers were not required to do so. Receiver Truesdale replied that it was the intention of the Alliance to sell coal at cost, which would drive other dealers out of business, leaving no one except the Farmers' Alliance to handle their fuel business, and this organization would be obliged soon to go out of business itself; that it was not fair to ask a road to place its property at the disposal of the Alliance for any such purpose. Moreover, he claimed the legal right to say who should be granted a portion of the depot grounds; that the Alliance was a private organization handling fuel only for its own individual

<sup>1</sup> Report, 1891, p. 732.

members, and not for the public; and that the granting of the privilege would result eventually in the covering of their depot grounds with private buildings. The Commissioners held that the refusal to grant to the Winnebago Farmers' Alliance a site on its side-track for a coal-house, after granting similar facilities to other parties, was contrary to the decisions of the court, a violation of the statute, an unjust discrimination against complainants and against public policy. The receiver was therefore ordered to grant the privilege within fifteen days.<sup>1</sup>

A common carrier which has been given by its charter privileges of a merchant has not the right, in the opinion of the Board, to grant to itself exclusive privileges in the handling of merchandise in which it is interested, but must accord with the law, which reads:—

"It shall be unlawful for any common carrier subject to the provisions of the act, to make or give any preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever."<sup>2</sup>

<sup>1</sup> See also case of Sunny Hill Alliance vs. C., M., & St. P. Ry. (Report, 1890, p. 911), in which complaint was made that they were refused room for a coal-shed site at Hartley. The Commissioners say, "The law provides that there must be no discrimination in matters of this kind. A railroad company, having established the custom of granting the privileges to coal-dealers in its depot grounds, will have to grant this same privilege, upon the same terms and conditions, to all other shippers of coal, so long as it is within reason so to do; and the courts have held that where there is a shortage of track facilities, there must be an equitable division among those desiring track." See also Report, 1890, pp. 856, 887.

<sup>2</sup> Chap. 28, 22d G. A., Sect. 4.

Hence a railroad company dealing in coal cannot exclude private dealers, but must furnish them with storage facilities and shipping privileges. It cannot neglect its duty as a common carrier because it has engaged in private business.<sup>1</sup>

The Board held that Sect. 4 of the law, which provides that, "It shall be unlawful for any common carrier to make or give any preference or advantage to any particular person, in any respect whatever, does not prevent the railroads from exercising full and complete control over their station-grounds; and in the exercise of this authority they may assign positions to omnibus drivers,<sup>2</sup> or they may give the exclusive right to an omnibus driver to board the train for the purpose of soliciting transportation of passengers and baggage.<sup>3</sup> From the strict accountability to which the carrier is held for the safety of passengers and freight, the right of the carrier to full control of its methods of conveyance and terminals must necessarily follow."

The lack of power to require joint rates<sup>4</sup> under the law of 1888 was made clear in the complaint<sup>5</sup> of the shippers of Davenport against the Burlington, Cedar Rapids, and Northern, and the Chicago, Rock Island, and Pacific Railways, filed June 25, 1889, and decided Aug. 9. The complaint was made that the two respon-

<sup>1</sup> Report, 1889, p. 1045, *Welles vs. W. C. & S. W. R. R.*

<sup>2</sup> Report, 1890, p. 903; see also 1892, p. 763.

<sup>3</sup> Report, 1890, p. 881; see also 1881, p. 135.

<sup>4</sup> Contract between two railroad companies for a joint haul of freight by which the charge made by each railroad company for its portion of the shipment is less than it charges for a haul of the same distance wholly in its own line.

<sup>5</sup> Report, 1889, p. 1087.

dents, who had joint-traffic arrangements for local business over their road in Iowa, prior to Feb. 1, 1889, by which they carried consignments at a much less rate than the sum of the two locals, abolished this arrangement after Judge Brewer issued his decision sustaining the Iowa Commissioners' rates; and that since then they had charged the sum of the two locals based on the maximum rates laid down in the Commissioners' schedule, whereas the joint rate was still in force upon interstate shipments, thus discriminating against Davenport dealers, and demoralizing Iowa's business interests. They asked that the Board restore the joint rates formerly in force. The position of the Board in the matter was stated as follows in their decision:—

"The last legislature authorized and directed the Commissioners to fix maximum rates of freight charges for each of the railroads of Iowa. It directed specifically how these rates were to be made, pointing out the different steps to be taken, thereby limiting any general powers with reference to rate regulation that the Commissioners might have been authorized by a previous statute to exercise. The authority of the Commissioners is derived from the statute, and beyond its expressed provisions they cannot act. It was urged by complainant that the Commissioners were not prohibited from putting in a joint tariff, and that a joint tariff would not be a discrimination punishable by any of the provisions of the Act, and hence the Commissioners could exercise implied powers. This position does not appear to us to be properly taken. It was also contended by complainant that, if the Commissioners had any doubt as to their authority to act under the statute, it would be proper to disregard the doubt, and that if a mistake was made the courts would restrain their improper act. The Commissioners are of the opinion that, when there is a reasonable doubt of their authority to act, that the authority should not be exercised ; and finding in the law no direct authority for making a joint tariff, this complaint is dismissed."

On Sept. 10 the same parties again requested the Board for relief. The Board requested of the companies the re-establishment of a joint running arrangement with through billing and through lading, but reiterated their decision that they were unable, under the law, to require an establishment of joint rates.

This decision of the Board, which held that the power to fix joint rates was not possessed by them, together with the opinion expressed that the law should properly give them this power, led to the passage, by the Twenty-third General Assembly, of an Act entitled, "An Act to amend Chapter 28 of the Twenty-second General Assembly, giving Authority for the making of Rates for the Transportation of Freight and Cars over two or more Lines of Railroad within this State, and enlarging the Powers and further defining the Duties of the Board of Railroad Commissioners."<sup>1</sup>

By this Act, railroads were required, upon demand of persons interested, to make traffic arrangements with connecting lines, by which cars could be transferred without unloading, or at least without unnecessary delay, and to establish reasonable joint through rates for the transportation of freight. A less charge by each of the railroad companies for its portion of such shipment than it would charge for a shipment for the same distance wholly on its own line, should not be considered a violation of existing statutes; but this did not permit unjust discrimination. In case railroads refused to fix joint rates, the Commissioners were directed to establish them, taking into account joint rates upon interstate shipments, and the average rates for shipments for simi-

<sup>1</sup> Report, 1890, p. 4.

lar distances within the State. The Board was directed to divide the charges between the railroads in case they could not agree upon a division.

Judge Fairall issued an injunction at the instance of the Burlington, Cedar Rapids, and Northern, restraining the Commissioners from acting under the statute. The Court, upon the final hearing of the case, declined to grant the motion to dissolve the injunction, because of the ambiguity of Sect. 3, the failure to provide compensation for services performed in making transfers from one line to another, and the failure to provide for the necessary details to carry out the requirements of the Act. The case was appealed to the Supreme Court, where Judge Fairall's decision was reversed by a bare majority, and the joint-rate law held constitutional. The contentions of the company were that the law was unconstitutional and void; that it deprived them of the right of contract, and deprived them of liberty without due process of law; denied the right of trial by jury, took property without just compensation for private and public purposes; that it was a regulation of interstate commerce, and violated the Constitution of Iowa in imposing excessive fines and punishments; that no notice was given of time and place when said rates would be fixed, and no opportunity given to show their unreasonableness, and that these rates were final and absolute; that it violated the Fourteenth Amendment to the Constitution, in abridging the privileges of the petitioner, and denied it equal protection of the laws; that it was void because it failed to describe or define the offences for which the extraordinary penalties were imposed, and imposed penalties by way of attorneys' fees upon rail-

road companies making any defence to actions brought under the Act.

Opinion was filed by the Supreme Court, Feb. 9, 1891.<sup>1</sup> It was written by Chief Justice Beck, and was based upon the contention that if the Railroad Commissioners had the right to fix the rate upon a single road, they might fix joint rates over connecting roads, assigning to each road its proportion of the charge. The establishment of a joint rate was the same thing as the establishment of a rate upon a single road, for it was simply fixing the rate to be charged by each road. The majority of the Court held the statute valid.

Justice Rothrock filed a dissenting opinion, in which Justice Robinson concurred. The opinion held that the judgment of the lower Court should be affirmed on the ground, first, that the law, in demanding the transfer of car-load lots, and in requiring one of the roads to be collecting agent of freight for the other, enforced contractual relations against the will of the parties. The second ground of dissent was found in the lack of meaning of a clause of Sect. 3 of the Act which reads, "The schedule of rates shall be *prima facie* evidence in all of the courts of the State, that the joint transportation of freight and cars upon the railroads for which such schedules have been fixed," and which leaves in doubt the question as to whether the joint rates fixed by the Commissioners were to be regarded as absolute.<sup>2</sup> The opinion concluded with the following statement:—

<sup>1</sup> Report, 1891, p. 47.

<sup>2</sup> With regard to the portion of Sect. 3 referred to in this decision, it is supposed that a clause was omitted in preparing or printing the

"It appears to me it will be time enough to authorize the establishment of through rates when a law shall be passed making a provision for the protection of the rights of property, which are everywhere and at all times regarded as sacred, and of which the owner cannot be deprived even by legislative authority without due process of law."

A rehearing of the original case of the Burlington, Cedar Rapids, and Northern was held before the Supreme Court,<sup>1</sup> in which an amendment to the original bill was made, introducing the schedule of joint rates promulgated by the Board, Oct. 7, 1890; but as no claim was made that this schedule was unreasonable, no legal questions were presented to the Court at the rehearing. The Court held that, inasmuch as no new legal question was presented by this appeal, it was not at liberty to revise, reverse, or review its former decision. It is a well-settled principle in the Iowa Court that a decision becomes an adjudication, even if erroneous. The Court therefore declined to take action upon the case, even though, its personnel having changed, some of the members did not approve of the reasoning of the majority in their first decision, and did not wish to be bound in any future case.

Meanwhile, on July 31, 1890, the Board issued a schedule of joint rates, by which the maximum rate of freight to be charged by any railroad company receiving business from a shipper at a station on its line within the State of Iowa, destined to a point within the State

bill for the use of the Assembly, and at the recommendation of the Commission, the General Assembly amended the Act by introducing between "the" and "joint" the words, "rates there infixed are reasonable and just maximum rates for the."

<sup>1</sup> Report, 1893, p. 25.

of Iowa on another line of railroad, or receiving freight originating within the State of Iowa on the line of another railroad, and destined to a point within the State of Iowa on its line, "was fixed at 80 per cent of the schedule of maximum charges formerly arranged by the Board."<sup>1</sup>

The Chicago, Milwaukee, and St. Paul, Chicago, Burlington, and Quincy, Chicago, Rock Island, and Pacific, and Chicago and Northwestern, with the Burlington, Cedar Rapids, and Northern, refused to put these rates in force upon their roads. The Chicago, St Paul, and Kansas City, Illinois Central, Iowa Central, and Mason City and Fort Dodge, and most of the strictly Iowa roads, adopted them. With the refusal, however, of the interstate roads to adopt the joint-vote schedule, the action of the Board was nullified. The rates established by the Commission were higher than the rates previously charged by the companies, and higher than those at the time in effect on interstate traffic.

The attorney-general brought suit at Council Bluffs against the trunk lines that refused to adopt the joint rates. These cases were tried before Judge Deemer in the Pottawatomie District Court. The Commissioners claimed that they had arranged the joint rates in accordance with the power vested in them by the legislature, and that their proceedings had been in compliance with the provisions of the Act. The defendants attacked the constitutionality of the Act, the regularity of the Commissioners' proceedings, and the power of the Court to enforce the orders of the Commission. Judge Deemer sustained the demurrers, and dismissed

<sup>1</sup> Report, 1890, p. 6.

the complaints on the ground that such order as the Commissioners desired was not enforceable by decree of a court of equity. The Joint-Rate Act, in declaring that such rates as the Commissioners established should be *prima facie* evidence of what are just and reasonable rates, established a rule of evidence, and the Court had no power to determine the reasonableness or unreasonableness of a rule of evidence. The Court could only take cognizance of the matter in a case submitted to it.<sup>1</sup>

Appeal was taken to the Supreme Court, and an opinion rendered May 14, 1894. The Court declined to pass upon the constitutionality of the Act, and declared it not in force because the Commissioners had failed to give the proper notice required by the Act before making their orders. It is therefore considered by many still an open question whether the Joint-Rate Act is valid or not. The dissenting opinion in the first case did not touch the vital point, but was based on the incongruities of the law and the apparent failure of the Act to make proper provision for the protection of the rights of carriers. A decision which shall settle definitely the constitutionality of the Act is demanded.

<sup>1</sup> Report, 1894, p. 29.

## CHAPTER IV.

**QUESTIONS OF JURISDICTION.**

QUESTION arose concerning Sect. 1 of the law of 1888, which declares that "the provisions of this Act shall apply to the transportation of passengers and property, . . . and shall also be held to apply to shipments of property made from any point within the State to any point within the State, whether the transportation of the same shall be wholly within this State or partly within this State and an adjoining State or States." A case in which the constitutionality of this clause was tested was brought in the District Court of Lyon County.<sup>1</sup> At different times during the months of October, November, and December, 1889, and January, 1890, D. J. Carpenter shipped from Beloit, Ia., to Sioux City, Ia., fifteen car-loads of live-stock over the road of the Chicago, Milwaukee, and St. Paul Railway Company, for which he was charged \$56.76 more than the schedule rates of the Board. A complaint of overcharge was made to the Commission, which ordered the railroad company to conform to the schedule rates and refund to Carpenter the overcharge. The defendant refused to obey the order, and action was brought in the District Court of Lyon County to enforce it. The railroad of defendant is sixty-seven miles in length between Beloit and Sioux

<sup>1</sup> "Northwestern Reporter," 53, 351.

<sup>2</sup> Report, 1890, p. 849.

City, and in this distance crosses the State line four times, a little more than half of its line being in Iowa, and the remainder in South Dakota. On this ground the company held that it was an interstate shipment, over which the Commissioners had no control. Their position was sustained by the District Court; and the case was brought on appeal to the Iowa Supreme Court, where a decision was rendered by Justice Robinson, Oct. 24, 1892, reversing the decision of the District Court, and declaring the statute constitutional, following a Federal decision<sup>1</sup> which involved the same principle.

Another case, in which this important question of the jurisdiction of the State courts over State railroad matters was discussed, is that commonly known as the Dubuque switching-case,<sup>2</sup> in which the Chicago, Milwaukee, and St. Paul refused to switch cars of oil from Dubuque to certain lime-kilns near the city, the oil having come from Lima, Ohio, over the Chicago, St. Paul, and Kansas City Railway. The Chicago, Milwaukee, and St. Paul held that the shipment was interstate, over which the Commission had no jurisdiction. Furthermore, the company denied the right of the Commission to compel it to give the use of its terminal tracks and facilities in the city of Dubuque to any other company competing with it for business for the purpose of delivering or receiving freight from any depot, warehouse, or other place of business, regardless of whether said freight was interstate commerce or otherwise; and asserted that it would at all times deny and resist the

<sup>1</sup> Railroad company vs. Penna., 12th Supreme Court Reporter, 806.

<sup>2</sup> Report, 1889, p. 1032.

power and authority of the Commission to make such order, for the reason that it was manifestly unjust, unreasonable, and oppressive. The Board held unanimously that the service required of the respondent road was purely local, confined to the city limits, and yards of respondent company; that the interstate character of the shipment ceased when Dubuque was reached. Moreover, Sect. 4 of the Act requires railroad companies to switch all cars tendered by connecting roads on such terms as are prescribed by the Commissioners. They therefore ordered respondent to take all shipments tendered. The Chicago, Milwaukee, and St. Paul Railway immediately established a station at the lime-kiln, three and one-half miles outside of Dubuque, and put in the Commission rates for five miles, thus making a charge of \$13.00 to \$15.00 per car, instead of \$2.50, the regular switching-rate. Complaint was made; and the Board reaffirmed its decision, leaving the switching-charges at the rates formerly established. The company refusing to comply, suit was brought in the District Court of Dubuque County. The case was removed by defendants to the United States Circuit Court, upon the ground that the controversy was wholly of an interstate character, between corporations created under Wisconsin law and citizens of Iowa, and presented questions arising under the Constitution and laws of the United States. A motion was made in the United States Court to remand the case to the Iowa Court; and this motion was upheld by Judge Shiras, Judge Caldwell, the Circuit judge, concurring.<sup>1</sup> This opinion was of the greatest importance, because it settled the matter,

<sup>1</sup> Report, 1891, p. 862.

as far as it could be settled without appeal to the Supreme Court of the United States, that suits brought to enforce orders made under the State law are not removable under the Acts of Congress to United States courts. "The real question to be solved," said Judge Shiras, "is whether a Circuit Court of the United States can entertain jurisdiction of a proceeding brought under the provisions of a State statute to enforce by decree the orders made by the Board of the Railroad Commissioners touching the management and operation of the railways within the State of Iowa." Judge Shiras draws a distinction between cases in which the object is to enforce private rights and those in which the State as a party seeks to maintain public rights. In the former cases, a right of action might be created over which the Federal Court would have jurisdiction, provided the amount at stake and the citizenship of the parties were such as to confer jurisdiction; but when proceeding is brought under the State statute for the purpose of compelling the common carrier to manage its business in the manner required by the rules or orders adopted by the Commissioners, then the State is seeking to compel obedience to its public laws, and the State, whether the suit is in its own name or in that of some board of officials created by the law of the State, is acting in its sovereign or governmental capacity, and in so doing it must act through agencies of its own creation, that is, through the State courts. The case was therefore remanded to the District Court of Dubuque County, and there tried; and the order of the Commission which required the restoration of the switching-charge by the Chicago, Milwaukee, and St. Paul Railroad Company was over-

ruled. On May 23, 1893, the Supreme Court of Iowa affirmed this decision, holding that the service in controversy was not a switching-service, and that the railroad company was entitled to charge local rates therefor.<sup>1</sup>

<sup>1</sup> Report, 1893, p. 39. See also 1890, pp. 901, 920, *Wylie vs. C., M., & St. P.* See also 1893, p. 254, *Wolff vs. C. & N. W.*

**CHAPTER V.****OTHER POWERS EXERCISED.**

QUESTIONS of discrimination which had demanded so much attention from the Advisory Commission, and had appeared in interesting phases in the early years of the strong commission, came to be of little importance as the years went on. The new law prohibited discrimination absolutely, and there can be no surer index of the success of the Board in the establishment of rates which should meet this requirement than is to be found in the disappearance of this class of complaints. Complaints of overcharges continued to be numerous, but these were in most cases errors which the companies were willing to rectify when their attention was called to them. Under a schedule of rates to which all shippers had access, errors of this kind were more strictly noted, and brought to the attention of the Board.

With the practical disappearance of cases of discrimination, the attention of the Commission was taken up with questions which arose under such provisions of previous Acts as had not been repealed by the law of 1888, for the last-named law concerned itself with questions of rates only. As these various questions were similar to those discussed under the Advisory Commission, and as the decisions were in general accord with the earlier rulings, it is necessary to discuss but few of them here. In all questions which involve the interpretation

of the law, the Commissioners have persistently declined to assume powers of constitutional construction. They have left this to the courts, and have acted in accordance with their understanding of the law as it appears on the statute-books.<sup>1</sup>

In recent years complaints of inadequate train-service on branch lines have become numerous. These complaints are the direct outcome of the increase of through business. The railroads have catered to their interstate traffic by inaugurating fast and complete train-service, and this has operated to rob the branch lines of much of their efficiency. The Commissioners have rightly held, in cases brought before them, that, because a branch line is operated at a loss, is no good reason for impairing its efficiency; for "it is becoming a conceded theory in railroading that lateral lines are profitable as feeders, even if operated at a loss in themselves. They are thrown out on either side to secure and occupy territory, and shut out competition. They are frequently built mostly by local aid, are the feeders that supply the main artery of trade with life and traffic, and are an individual part of the great system of which they are arms. The recent reports of the Union Pacific Railway show a number of branches whose earnings fail to pay the fixed charges guaranteed by that company; and yet the traffic they bring the main line is conceded to be worth more than the guarantee, and they are regarded as a profitable part of the great system on that account."<sup>2</sup> They consider it obligatory upon the railroads to furnish to residents upon these branch lines the means of easily reaching

<sup>1</sup> See Carpenter vs. C., M., & St. P., Report, 1890, p. 849.

<sup>2</sup> Report, 1889, p. 1004, Citizens Ringgold County vs. C., B., & Q.

trade centres, county seats, and other important points, and the opportunity to go and return on the same day.<sup>1</sup>

Ninety-two cases concerning stations have been presented to the Board since 1888. These cases largely concern the removal and abandonment of stations, and applications for new ones. The policy of the Board regarding new stations is expressed as follows:—

"The Commissioners have hesitated to order new stations where the railroad companies urge that they will add materially to the cost of operation of the road without any increase of business, and have ordered them only in cases where the accommodation and convenience of the public absolutely required further station facilities. The power conferred by law is absolute, and from it there is no appeal; it should therefore be exercised with discretion."<sup>2</sup>

The law of 1888 did not modify the jurisdiction of the Board over questions of crossings, so that the procedure of the new Board was similar to that of the Advisory Commission.<sup>3</sup> Questions concerning farm crossings have come to be of considerable importance. On May 23, 1892, G. L. Cutler petitioned the Board that the railroad company be required to put in an under-track crossing.<sup>4</sup> The road ran diagonally across his farm; and the only crossing which he had was over an embankment, which was inadequate. The Board sustained the complaint, but the company refused to comply. Suit was brought to compel enforcement. The company demurred in the District Court, on the ground that both the Commissioners and the Court were without jurisdiction of the subject matter. The Court overruled the

<sup>1</sup> Report, 1891, p. 788.   <sup>2</sup> Report, 1889, p. 1020.   <sup>3</sup> See *ante*, p. 85.

<sup>4</sup> Report, 1892, p. 26; "Northwestern Reporter," 52, 490.

demurrer; and the case was appealed to the Supreme Court, which affirmed the judgment of the lower Court. It was urged by the defendant that the Commissioners had no authority to make the order because it affected a private, and not a public, right. The Court held that the right was a public one. The railroad had been granted the privileges of eminent domain, which were of a public nature; the railroad, in accepting its franchise and receiving these privileges, placed itself under the authority of the laws of the State; by Code Sect. 1268, it is provided, "when any person owns land on both sides of any railway, the corporation owning the same shall, when requested so to do, make and keep in repair one cattle-guard and one causeway or other adequate means of crossing the same at such reasonable place as may be designated by the owner;" the obligation of the corporation to make such crossing was primarily to the public, resulting from the acceptance of its franchise. Moreover, by reason of the passage of stock over the tracks, the crossing affected the public safety in the operation of trains.

The next contention of the railroads to which the Supreme Court replied was with regard to the jurisdiction of the Commissioners in the matter. The Court quoted Sect. 3 of the Act of the Seventeenth General Assembly, which gave the Commissioners general supervision over all the railroads of the State: —

"We think it is hardly to be doubted that it was the duty of the Commissioners under that Act to inquire into violations of the law as to private railway crossings, as well as other violations of the law; for the language is, 'and shall inquire into any neglect or violation of the laws of the State,' and again, 'when-

ever in the judgment of the Railroad Commissioners, it shall appear that any railroad corporations failed to comply with the . . . laws of the State in any respect or particular, . . . said railroad Commissioners shall inform such railroad corporations of the improvement and changes which they deem proper,' etc. No good reason is suggested, nor do we think there can be, why this comprehensive language does not embrace an inquiry by the Commissioners into violation of the law with regard to private crossings, as well as violations in regard to other particulars of construction."

A case was filed on Oct. 11, 1893, by Alexander Warnock against the Burlington, Cedar Rapids, and Northern Railroad, which was similar in many respects to the Cutler case.<sup>1</sup> A farm was cut in two by the railroad ; and the complainant was compelled to drive his stock through gates and over the track, thereby experiencing great inconvenience and risk. It was claimed by the railroad that it had fully complied with the law in furnishing the plaintiff with his grade crossing ; that it was the ownership of land on both sides of the railroad that determined the right to the crossing and the nature of it, and not the business of the owner or the purpose for which he desired it ; that what was considered adequate for one must be so for all land-owners, or at least that, as grade crossings were the rule in the State, the circumstances surrounding plaintiff did not entitle him under the law to any other. The Commissioners ordered an underground crossing in this case ; and, as they had done many times before, took occasion to call the attention of the Governor and the legislature to the uncertainty of the law as to the rights of parties interested in such crossings, and urged that they

<sup>1</sup> Report, 1893, p. 171.

be more clearly defined. If the underground and overhead crossings were to be introduced on a large scale, the matter of expense would become a serious one; and the question must be settled as to how the expense should be shared, if at all, by the parties interested. The Warnock case has not yet been settled. The doctrine of farm-crossings, as laid down in the case of Gray vs. Burlington and Missouri Railroad,<sup>1</sup> has been generally followed by the Commissioners:—

“The law must be construed so as to protect the citizen, and guard him against needless burdens and encroachment. He has a right to as free and unobstructed egress as the circumstances of the case reasonably admit; and whilst the railroad company has the right to intervene between him and the highway, it has not the right unnecessarily to subject him to the inconveniences and burdens which can be guarded against by the exercise of reasonable care and at a reasonable outlay. When the only means a citizen has of reaching a highway is across the railway, he may insist that an open crossing be provided for him, by means of which he may reach the highway without stopping to open gates or remove bars.”

The Commission took into account the question of expense and danger in determining whether crossings should be at grade or over or under grade.

The jurisdiction of the Board over railroad crossings was settled by the Supreme Court in a decision rendered Oct. 8, 1892.<sup>2</sup> Sect. 1292 of the Code declares that a railroad company whose road intersects or crosses any other line of railroad of the same gauge *shall* connect its road with such other railroad so intersected. Chapter 24,

<sup>1</sup> 37 Iowa, 119.

<sup>2</sup> Citizens of Algona vs. C., M., & St. P.; Report, 1889, p. 1058; Report, 1890, p. 843; and Report, 1892, p. 37.

Sect. 1, of the Act of the Twentieth General Assembly (1884), provides that corporations having intersecting roads shall, "*whenever ordered by the Railroad Commissioners*, unite and connect their tracks." The citizens of Algona petitioned for a connection of the Chicago, Milwaukee, and St. Paul, and the Chicago and Northwestern; and the Commissioners, while not considering the connection commercially necessary, regarded the law first quoted as mandatory, and ordered the connection. Suit was brought to enforce the order, and obtain the construction of the statute; and the courts held that the provision of the Act of 1884, giving Commissioners power over the matter of connection, was intended to supersede the portion of the statute making the connection compulsory.

**CHAPTER VI.**

***METHODS OF PROCEDURE.***

CONSIDERABLE doubt arose in the minds of the Commissioners, soon after the passage of the law of 1888, as to the method in which their duties were to be performed; this doubt arising from a provision in the law of 1888 which says that "nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or *by statute*, but the provisions of this Act are in addition to such remedies." The repealing clause reads, "All laws now in force in *direct* conflict with any of the provisions of this Act are hereby repealed."

The original Act of 1878, under which the Board had been created, had granted general supervisory powers. The only case in which any formal complaint was necessary in order to require action by the Board was that prescribed in Sect. 15, which related to the examination of rates of passenger or freight traffic within the limits of a city, town, or township.<sup>1</sup> In such cases, the application was made by the officers of the civil division or by legal voters, and the Commissioners were required to give notice of hearing. Aside from this section, the law provided for no formal method of procedure; and the Commissioners regarded this as one of its strong points. They encouraged complaints of the most informal char-

<sup>1</sup> See Appendix I.

acter, and endeavored to make the Board as different as possible from an ordinary court. This was entirely in harmony with the statute creating the Commission, which had conferred powers of a supervisory and advisory character, and had intended that the findings of the Board should depend for their acceptance upon their soundness and justice. This method was pursued until April 3, 1884, when an Act, passed by the Twentieth General Assembly, was approved, by which cases affecting public right were to be instituted by the attorney-general, in the name of the State, in the Circuit and District Courts of the State. In case the order of the Commissioners was reasonable and just, the Court was to issue mandatory and perpetual injunction, refusal to obey the decree rendering the officers of the company guilty of contempt.

Before the question of the Board's prerogative as to procedure had had a good opportunity to be tested, the Act of 1888 was passed. By this Act the duties imposed upon the carrier were specifically stated, together with the method of procedure in all cases of violation by the carrier of the specific provisions of the Act. The law required that all charges made for any service rendered in the transportation of passengers or property in the State of Iowa should be reasonable and just, and any unjust charge was declared unlawful. Unjust discrimination was prohibited. Preferences were not to be given to particular persons or particular kinds of tonnage, with certain necessary exceptions. Proper arrangements were to be made by carriers for the interchange of traffic, pooling was prohibited, and the "long and short haul clause" introduced. Commissioners

were ordered to make a schedule of reasonable maximum charges, and the procedure in matter of violation of law by the carriers was laid down.

This Act defined clearly the methods of procedure in cases arising under the Act,<sup>1</sup> but the question to be settled was whether the Board had jurisdiction beyond the provisions of this Act. If this Act, as it is specifically stated, did not "in any way abridge or alter the remedy now existing at common law or *by statute*," but was "in addition to such remedies," and if the repealing clause did away with such laws only as were in *direct* conflict with the provisions of the Act, there were clearly powers remaining of a general supervisory character, broad and almost unlimited, which were conferred upon the Board by the law of 1878; and if the case under investigation involved a question of public right, recourse could be had to the courts under the amendment of 1884. As the schedule of freight rates became gradually more satisfactory, and as the discriminations, the punishment of which formed the burden of the Act of 1888, ceased to exist, the necessity for the method of procedure under this Act disappeared, and the question as to whether the Board had powers under prior Acts came to be of very great importance. The Board held steadily that the method of procedure provided in the Act of 1888 was limited to and intended only for those cases arising under that particular Act, and the Supreme Court sustained impliedly this theory of the case.

In the case of the State against the Des Moines and Fort Dodge Railway Company, involving an order for

<sup>1</sup> See *ante*, p. 128.

the rebuilding of six miles of track, the Supreme Court, in rendering its decision, Jan. 30, 1892, used the following language:—

“The statute clearly contemplates that only such orders as are reasonable and just shall be enforced. It does not contemplate that in all cases the reasonableness and justness of such orders should be found by judicial determination of the Court, but only such as are violated, and then at the instance of the Commissioners. Thus, if the Commissioners refuse to make an order, or when an order is made by them and observed by the company, its reasonableness or justness cannot be made a matter of investigation by the courts. It then quite conclusively appears that, in so far as the public are concerned, the judgment of the Commissioners is conclusive as to orders and regulations.”<sup>1</sup>

This question of procedure was taken up in the case of the State vs. the Mason City and Fort Dodge Railroad Company, in which an opinion was filed by the Supreme Court on May 23, 1892.<sup>2</sup> This was the Cutler case already discussed.<sup>3</sup> The significant portion of the decision for us in this connection is found in the following sentences:—

“It is said by appellee that, if the Court is not satisfied that it has the power to enforce the order under the provisions of the Act of the Twentieth General Assembly (1884), Sect. 16 of the Act of the Twenty-second General Assembly (1888) gives explicitly the power to enforce it. *The possible, if not probable, doubt of that Act being applicable to orders of this character has induced us to determine the case without reference to it. . . .* The inquiry is made, ‘Is the Board of Railroad Commissioners a court?’ An answer to the query is not essential to the question of its jurisdiction. The order of the Board as a result of

<sup>1</sup> Report, 1892, p. 25.

<sup>2</sup> Report, 1892, p. 26; “Northwestern Reporter,” lli. 490.

<sup>3</sup> See *ante*, p. 164.

its investigation is not the judgment or conclusion that binds the parties. It is merely by the law made the basis of an action, wherein the rights of the parties are investigated, and determined by the prescribed rules of judicial inquiry."

The Court seemed here to agree with the Commissioners in holding that the methods of procedure laid down in the Act of 1888 applied only to cases arising under this Act, and that the Board had powers and duties under the previous Acts, of which they had not been deprived by the later statutes.

But this position of the Court was at least impliedly overruled in a decision rendered Oct. 25, 1892,<sup>1</sup> which has again thrown the whole question of procedure into confusion. The case was that of the State vs. the Chicago, Milwaukee, and St. Paul Railway Company, in which the Sunny Hill Alliance applied for permission to erect a coal-house on the station-grounds at Hartley. The petition was refused. The Alliance then appealed to the Commissioners for aid, simply stating in their petition that they had asked room for a coal-house site, and that their request had been refused. A copy of the complaint was forwarded to the company, which declined to grant the request on the ground that their side-track facilities were limited. The Commissioners made a personal investigation of the premises, and ordered that the petition be granted. The railroad company refusing to comply, suit was commenced in the District Court of O'Brien County to enforce the order. The defendants demurred on the following grounds: 1, want of jurisdiction in the Commissioners over the subject matter; 2, the facts did not entitle plaintiff to the relief

<sup>1</sup> Report, 1892, p.30.

demanded. The demurrer was sustained, and on Feb. 18, 1891, the plaintiff filed an amended petition, which set forth, in addition to the original petition, that the Sunny Hill Alliance was a dealer in and shipper of coal, and wished to ship over defendant's road; that the possession of a coal-shed adjacent to the tracks was necessary to the profitable conduct of the coal business; that other dealers were granted this privilege, and that this petition was made upon the same grounds as the petition of other dealers; that inasmuch as the lack of coal-sheds near the track made the dealing in coal much more expensive, the refusal to grant the privilege to the Alliance which was granted to other dealers operated as a discrimination against the Alliance, the petitioner. Upon the basis of this amended petition it was asked that a decree be entered declaring the order of the Commissioners reasonable and just. The defendant in reply moved to strike out the amended portion of the petition on the ground that it was immaterial, irrelevant, and incompetent. They claimed that the law required the plaintiff to make a record upon which the order was to be enforced by the Court; that the amended portions were not to be found in the record sued on, and not embraced in the finding made by the Commissioners. The Court had no jurisdiction to consider facts outside of the record in determining the justness of the order, and it was an attempt on the part of the plaintiff to present a different cause in Court from that presented to the Commissioners. The Commissioners won their case in the lower Court, but the Supreme Court reversed the decision. Four important questions were covered in the decision.

I. Is it necessary that a complaint be filed with the Railroad Commissioners by the party aggrieved in order to authorize them to take action in any case, or may they, in absence thereof, enter upon an investigation of a subject matter, power over which has been conferred upon them by the legislature? It was held from the reading of Sect. 3 of the Act of the Seventeenth General Assembly (1878), giving general supervisory powers, and Sect. 13 of the Act of the Twenty-second General Assembly (1888), that a matter within the jurisdiction of the Board might be inquired into upon petition, or the Commissioners might act upon their own motion, and in the absence of any complaint, formal or otherwise. But the Board, before serving a statement upon the carrier, should enter on record all the facts found, so that the carrier, when it received the statement, would know precisely the facts constituting the ground of complaint against it.

II. Can matters existing outside the record made before the Commissioners be pleaded in the District Court to show that the complaint made before the Court was in fact well grounded? The statute provided that "a statement of the complaint thus made" before the Commissioners should be served upon the defendant, who was required to satisfy the complaint, or to answer the same in writing, within a reasonable time to be fixed by the Commissioners. To hold that the District Court could, in determining whether an order made was reasonable and just, resort to facts which had never been the basis of complaint before the Commissioners, and hence not passed upon or investigated by them, would render nugatory the provision of the law just mentioned.

"The law does not contemplate, neither is it reasonable nor just, to require the defendant to defend against the case in the District Court which has never been presented to, or passed upon by, the Commissioners. It is the complaint which the Board passed upon, and a statement of which is served upon the defendant, that is to be heard in the District Court."

III. Did the petition state facts entitling the plaintiff to the relief demanded? Considering the petition with the amended portions stricken out, in accordance with the decision just rendered, the complaint merely stated the request of the Alliance for a coal-house; did not state that they were shippers and dealers in coal; nor that defendant had any land to grant; nor that land had been granted to others; nor, consequently, that discrimination had been practised. The petition failed to state facts entitling plaintiff to the order, hence the demurrer of defendant should have been sustained.

IV. Is this a question of public right? Can it be prosecuted by the State or the Commissioners? Held that the case, as presented by the complainant to the Commissioners, was not such as to call for an exercise of their powers, and hence did not involve a public right, and should not have been prosecuted either by them or by the State.

The Court based its decision mainly upon Sect. 13 of the Act of 1888. It decided that either a complaint must be filed with the Commissioners, or the Commissioners must investigate the case and secure the facts. The statement made to the company must then be founded upon the record of the Commissioners, and the case in the court must be tried upon this state-

ment. Sect. 13 says that any person "complaining of anything done, or omitted to be done, by any common carrier subject to the provision of this Act, in *contravention of the provisions thereof*, may apply to said Commissioners by petition, which shall briefly state the facts," etc. If, then, the case comes under the operation of the Act of 1888, the procedure is plain. The difficulty arises, however, in cases coming under the Act of 1878; and these cases are steadily surpassing in number those that arise under the later law. In this class of cases, in which the supervisory power of the Board is so extended, the Commissioners have always preferred to conduct their investigations in the most informal way, and have resorted to the courts only under pressure of necessity.<sup>1</sup>

<sup>1</sup> Their method of procedure they describe as follows: —

"A single letter is written to the Board, stating the matter complained of. A copy or statement of the substance of this is by the Board forwarded to the proper officials of the railroad company. They reply generally, stating either that the request cannot be granted for reasons stated, or that an investigation will be made by them, and the matter adjusted if practicable. In this latter way, very many cases are arranged and settled satisfactorily to all parties concerned, without further action by the Board. If the matter is not thus disposed of, and the party complaining is not satisfied with the reasons stated by the company as its grounds of refusal, the Board notifies the complaining party to substantiate his claim by proper evidence; or where a personal examination by the Board will disclose the substantial facts, or it will save material expense to have the investigation at the locality in question, all parties are duly notified, and the Board then meets and examines the premises, hears all persons interested in an informal way, without much regard to the technical rules of evidence, but aiming to be guided by the essential principles thereof, to the end that the material facts be ascertained, and such a finding or order be made as to the Board seems reasonable and just and in accordance with the law governing in the premises. A very large proportion of the findings, recommendations, or orders made by the Board under such circumstances are followed or complied with by the railroad companies. If any are not, and are deemed of sufficient importance to justify it, suit is brought for enforcement under the Act of the Twentieth General Assembly." (Report, 1892, p. 36.)

A case involving the same question was that of the State vs. Chicago, Milwaukee, and St. Paul Railway Company.<sup>1</sup> Here there was an open crossing near a cut, which obstructed the view of trains approaching from the east. The Commissioners, after a personal examination, held that the crossing was dangerous to the parties crossing, and to passengers on the train. The road refused to put in the crossing. Suit was brought in the District Court, which ordered an overhead crossing. The Supreme Court, in reversing the decision of the lower Court, questioned whether the order of the Commissioners could form a proper basis for an action in Court, because the finding of the Board was not placed before the District Court in the form of sworn testimony.

The Commissioners argue rightly, that if these decisions of the Supreme Court are to apply to cases in which the informal method of procedure is used, the plaintiff will be compelled to draw up his case formally and fully before presenting it to the railroad. If this is required of the complainant, why not of the defendant? Why shall not the railroad be compelled to set up the defence before the Commissioners which it intends to employ in the Court? This would in effect transform the Board into a court, involving formal trial, with all the delay and expense incident to court procedure, a state of things which the legislature intended expressly to avoid in the passage of the law of 1878. It makes the District Court merely a Court of appeal from the hearing of the Commissioners, and not a Court of original jurisdiction, passing upon all the facts which

<sup>1</sup> Report, 1892, p. 893.

can be adduced at the time to prove the reasonableness and justice of the order which the Commissioners desire to see enforced. It was held in the Cutler case, before mentioned, that "the order of the Board, as a result of its investigation, is not the judgment or conclusion that binds the parties. It is merely by the law made the basis of an action wherein the rights of the parties are investigated and determined by the prescribed rules of judicial inquiry." It is evident that this Cutler decision endeavored to draw a line of distinction between the Court and the Board of Commissioners, but the later decision practically does away with the line of demarcation.

In this question of procedure, is involved the entire problem of railroad control. It has long since been settled that the people, through their legislative body, have power to control the railroads, and that this power can be delegated to a board of railroad commissioners. The important question, which it may take years of patient study to solve, is the manner in which this power is to be exercised so that it may be made effective. If the principle laid down by the Supreme Court in these decisions is adhered to, the power which the Commissioners possess of effective control over the railroads will be seriously impaired.

**CHAPTER VII.****CONCLUSIONS.**

THE Commission of 1888 has, all things considered, met with gratifying success in its labors. The untold benefit to be derived by a State from stable rates has been realized in large part by Iowa, and complaints of discrimination have come to occupy but little of the time and attention of the Commissioners. It would be rash to say that all discrimination has ceased in Iowa, but the fact that complaints have fallen off to such an extent is evidence of a change in conditions. Almost all the business of Iowa is being done upon the Commissioners' rates; and, although these are only maximum rates, there seems little disposition on the part of the railroads to lower them. The Commissioners maintained, in their report for 1891, that the rates in force, while they materially reduced published tariff rates of 1889, promoted a steady increase in tonnage and revenues on roads doing business in Iowa. The fiscal year 1891 showed a net increase in tonnage of 1,369,882 tons over 1890. From tabulated statements it was shown that, since the legal rates had been in force, there had been a steady increase in the revenues of nearly all the roads in the State, the aggregate earnings on Iowa business mounting from \$37,148,399.75 in 1889 to \$43,102,399.25 in 1891.

Ex-Governor Larrabee has the following to say re-

garding the law of 1888, in reply to the extreme criticisms of the railroads:—

"From July 1, 1889, to June 30, 1892, the gross railroad earnings of the Iowa roads, which for three years had been at a standstill, increased, and were over \$7,000,000 more in 1892 than they had been any year previous to 1889, as will be seen from the table below:—

GROSS EARNINGS

1886-87 . . .	\$37,539,730	1889-90 . . .	\$41,318,133
1887-88 . . .	37,295,586	1890-91 . . .	43,102,399
1888-89 . . .	37,469,276	1891-92 . . .	44,540,000

"The net earnings per mile of the Iowa roads were \$1,421.91 in the year 1888-1889, and \$1,821.37 the year following. The total net earnings of all Iowa roads during the year ending June 30, 1891, were \$14,463,106, against \$11,861,310 during the year ending June 30, 1889, and were still greater for the year ending June 30, 1892. No further vindication of the Iowa law is necessary. These figures show plainly that the lowering and equalizing of the rates not only increase the roads' business and income, but also their net earnings. And it must be remembered that the reports showing these facts were made by the railroad companies, and were certainly not made with any intention of prejudicing the cause of the railroad managers."<sup>1</sup> . . . "Still better results could have been secured if the railroad managers had been in sympathy with the law. There is no doubt that they would gladly suffer, or, rather, have their companies suffer, a loss of revenue, if this would lead to a repeal of the laws, and restore to them the power to manipulate rates for their own purposes."<sup>2</sup>

The great benefit to Iowa has been found in the development of home industry. New coal-mines have been opened, new mills and manufacturing concerns erected, the jobbing business has extensively increased. Products are now exchanged much more largely between

<sup>1</sup> "Railroad Question," p. 265.

<sup>2</sup> *Ibid.*, p. 293.

sections of the State than before, and people no longer look outside the State to find both a purchasing and a selling market.

"The farmer gets his supplies cheaper, his lumber, coal, salt, and other heavy commodities, at fair rates. He finds a market for a portion of his surplus corn, oats, hay, wood, timber, etc., at home, and saves transportation. He markets many of his hogs in Iowa packing-houses, and saves freight charges. Wood and logs, that lay in the timber rotting, the Iowa rates are making a market for; and new mills are sawing the latter up for use in excelsior, fencing-pickets, handles, boxes, and other industries unknown before. The railway policy of the long haul has, in a measure, been supplanted by the new system, and an exchange of products between different parts of the State is one of the commendable results. Hay and corn from Northern Iowa are now sold at better prices in the dairy counties of Eastern and Southern Iowa in large quantities, a thing hitherto unknown. These formerly paid tribute to Chicago."<sup>1</sup>

The Commission testifies as follows regarding the stability of rates:—

"There have been no rate-wars and consequent disturbance of business in Iowa the past two years. The stable character of Iowa rates which have been in force, with only such slight changes as have been made in classification from time to time, is approved on every hand. While rate-cutting has been in vogue in the States around us, and the troubled waves have surged up against our very borders, wasting the energies of the great corporations and the revenues of the stockholders, Iowa has been largely free from the devastating and demoralizing influences; and with the curtailing of rebates, secret rates, free passes, and other special privileges which the few formerly enjoyed at the expense of the many, there has followed steady rates and increased revenues, more than sufficient to make up for any deficiency caused by reductions of local rates. The evil effects

<sup>1</sup> Report, 1891, p. 9.

of rate-wars on business are also unknown here, and instead we have steady rates and uniform charges shared alike by all.”<sup>1</sup>

It was claimed by the opponents of the existing system that the falling off in railroad building was due to the unremunerative rates established by the Commission, and that, in order to encourage the extension of new lines, rates should be raised. Investigation, however, leads to the inevitable conclusion that the demand for railroad facilities has fallen off. Iowa has eighty-five hundred miles, with no spot in the State more than fourteen miles distant from a railroad. This would readily account for the fact that only sixty-five miles of railroad were built during the year 1893, as it would for the fact that Illinois, with higher rates, built only sixty-two miles during the same time.

<sup>1</sup> Report, 1891, p. 16.



PART IV.

*GENERAL CONCLUSIONS.*



## PART IV.

---

### GENERAL CONCLUSIONS.

FROM the unexpected success of the Iowa Commission in its strong form, it would be premature to conclude that the universal adoption of such a policy by other Commonwealths would be any great step in the solution of the railroad question. Whether such a commission with the extended powers is at all to be desired, depends upon the character of a State's population, its industrial condition and commercial interests, and upon its geographical situation.

Massachusetts has been eminently successful in its advisory form of commission, but the circumstances under which the plan has evolved have been widely different from those affecting the Northwestern States. This Commission, organized in 1869, was based entirely upon the conviction of "the eventual supremacy of an enlightened public opinion,"<sup>1</sup>—which means, of course, public opinion with ultimate power in the legislature and the courts, for without this power public opinion is ineffective. The merits of the system were not realized at the start, but only after some years of experience; in fact, it was only an accident that the plan was adopted. "Had it not been a flagrant legislative

<sup>1</sup> "Railroads, their Origin and Problems," Adams, p. 140.

guess, it would have been an inspiration.”<sup>1</sup> This Commission worked out its idea in a conservative community, whose habits of life and ways of thinking were established. The period of rapid railroad building, with all its attendant evils, had passed, and the Board was set down in a State well supplied with railroad facilities, and fairly well satisfied with the manner in which the transportation business was being conducted. The Commissioners handled the complaints presented to them in a masterly manner, publishing a full statement of their decisions, which, under the harmonious relations existing between carriers and shippers, were as a rule readily accepted. The act giving the Massachusetts Commission power over corporation accounts was passed with the active assent of many of the railroads, and the system of investigation and reports was by this step brought to its ultimate point of development under a State government.

Iowa and the Northwest were in the stage of railroad pioneering when the commission system was introduced. The railroads grew hand in hand with the commissions, and the problems increased more rapidly than the ability of the commissions to handle them. There was no such spirit of forbearance existing between shippers and carriers as was to be found in Massachusetts. Its place was taken by a spirit of mutual distrust, which developed in some sections into bitter hatred. Under such circumstances, it was at least hazardous to trust to the strength of public opinion to enforce decisions. Decisions at times favored the railroads, as was natural, and such findings often met with storms of opposition

<sup>1</sup> “Railroads, their Origin and Problems,” p. 138.

from the Granger element. On the other hand, the railroads had many supporters in the Western States who belittled all anti-railroad decisions. There seemed for many years no desire on the part of contending factions to come to a settlement. This feeling was enhanced by the fact that, whereas in Massachusetts the railroad owners were residents of the State or section, in Iowa and the West but a very small fraction of railroad stock was held by residents. Charles Francis Adams declares that the statement that the Eastern owner of Western railroad securities was insensible to public opinion in the West had no weight, and that the Eastern owner was in fact peculiarly sensitive to it.<sup>1</sup> This may be true; yet the fact that his residence was so far from the seat of action made it impossible for the stockholder to possess that intimate knowledge of railroad matters that he would have had were the corporation operating all about him; and he was obliged by the force of circumstances to trust the management of affairs largely to subordinates, who had more in mind the securing of adequate revenues than of serving the people in the territory traversed, and who were often required to conduct the line so as to conform to the demands of Wall-street operators. Then, again, the mere fact that the owners of railroads lived at such distance added fuel to the flame of Western sentiment. Whether the conclusion was warranted or not, the people of the West felt that the absence of owners denoted indifference to their needs and wishes; and they constantly pictured to themselves the absentee owner enjoying in ease and luxury the earnings of his Western investments, while the peo-

<sup>1</sup> "Railroads, their Origin and Problems," p. 144.

ple were suffering from exactions and discriminations at the hands of wilful subordinates. Moreover, more radical legislation was possible under absentee ownership, because the owners were not citizens of the State, and could not, through their influence and their votes, check the passage of hasty and unwise laws.

Iowa's geographical position rendered the presence of railroad evils almost inevitable. As already noted in an earlier part of this essay, Iowa was the most western of the States which was obliged to depend upon Eastern markets. The through haul was a prime necessity at the opening of the commissioner period. The great trunk lines parallel each other in their passage across the State, and the temptations for severe rate-cutting are almost irresistible. The railroads, by their system of rates, have built up the cities of Omaha and Kansas City to the west of Iowa, while neglecting the river towns upon the eastern border, Burlington, Dubuque, Clinton, and others.

The entire net increase of the population from 1870 to 1890 in Illinois, Wisconsin, Iowa, and Minnesota, except in the new section, was in cities and towns possessing competitive rates, while all those having non-competitive rates decreased in population.<sup>1</sup> As a result of this earlier policy of the railroads, Iowa has no large commercial or manufacturing centres, and is obliged to cross her State line in order to market a large portion of her produce. With this intense competition of trunk lines Massachusetts has had no experience.

Massachusetts was very fortunate in the permanence of tenure of the members of the Commission. They

<sup>1</sup> Stickney, "Railway Problem," p. 62.

were thus enabled to profit by their experience, and to become so familiar with railroad technique that they could meet the able railroad manager upon his own ground. The Western sentiment upon the question of tenure made such a condition of things almost impossible. It was, and is still, a general feeling among the Western people, that all citizens are capable of holding any of the offices within the gift of the State, and that the offices should be passed about from one to the other, so that the benefits may be universalized. Such a principle, when applied to positions which require a great amount of experience to be competently held, is disastrous to the best interests of the Commonwealth. More frequent changes than ever have occurred in Iowa's Board since the new plan went into effect, by which the tenure of office was made dependent upon the mutations of politics.

This law, making Commissioners elective, was passed in the spring of 1888. Before that time the Commissioners had been appointed by the Governor, and their selection had depended in no degree upon their political affiliations. The opponents of the new order predicted that the change would furnish the railroads the opportunity which they sought of going into politics, and so it unfortunately proved. It has resulted in more than one campaign being fought out by the railroad and anti-railroad forces, regardless of the connection of the candidates with one or the other of the great national parties. A Commissioner who by his public acts seemed to favor the Granger sentiment as opposed to the railroads, would be obliged, if a candidate for re-election, to face the combined forces of the corporations, ably

directed from railroad headquarters. At one election, handbills and telegrams were sent out along the lines of road directing the employees to vote for a certain man who was supposed to be friendly to railroad interests. The grain men and large shippers were invited to join the movement. The opposition was strengthened through the multiplication of railroad employees' clubs, formed for no other purpose than to influence railroad legislation.

Experience has proven conclusively that the election of Commissioners by popular vote is dangerous in furnishing inducement for the powerful corporations to make themselves felt politically. An appointment of Commissioners by the Governor, with the consent of the Senate or the Executive Council, which was the method in vogue at first, should be restored. When this has been done, a great step will have been taken towards promoting a feeling of harmony between shippers and carriers,—a spirit indispensable to the satisfactory solution of the railroad question.

One conclusion to be drawn from what has already been said, is that the same form of commission cannot be advantageously worked in all States. That form of commission must be adopted which most nearly conforms to circumstances and conditions. In sections where the railroad system has acquired stability, where the period of rapid growth and consequent severe discrimination has passed, where the State is small and is not traversed by many competing trunk-lines, a system which relies for enforcement upon a public opinion which has a ready means of expressing itself has been found to be wonderfully successful. This principle is

operative to some extent in all States, for the railroads are always fearful of what the legislature may do if it becomes aroused by persistent disobedience on the part of carriers. But in a section where the territory to be controlled is large, where the transportation industry is new, and is productive of all the evils which are coincident with rapid growth, where the trunk-lines are built under circumstances which tempt them to fierce competition, and where stability of rates and a regard for a State's interest are necessary to its industrial prosperity, more adequate control seems absolutely necessary. If control of railroads, then, is to be left to State Commissioners, the form of control must be adjusted to industrial conditions.

But it must not be supposed that in a multiplication of State commissions is to be found the ultimate solution of the railroad question. Progress is made but slowly, and we have attained a decided advance when State commissions have been organized, and adapted to the needs of the various States. For many years, no doubt, the greatest advance must be looked for along State lines, and the incentive to further control must come from the movements in the individual Commonwealths. But for a final solution of the railroad question we must look beyond State lines.

The interstate character of a large portion of the railroad business shows the impossibility of complete control through State agencies. Some of the States have control of not more than fifteen or twenty per cent of the business that passes through them.

Then, again, much injustice and confusion arise in the West through the lack of uniformity in action

between the different State commissions. Many of the commissions have been unwilling to look at the railroad question in a broad-minded spirit. They often partake of the prejudices of their constituencies, and promote the schemes of the shippers of their community. Those States which have been given power to fix rates have adopted classifications in many cases independent of other States, and thus articles put in one class east of the Mississippi may be found in an entirely different class west of it. Mr. Stickney has shown, by means of diagrams,<sup>1</sup> the complete lack of harmony between the schedules of different States. These have been drawn up many times independently of mathematical rules, and upon a mere guess as to what is about right. It is taking a very narrow view of the question for a board to maintain that it is concerned only with the interests of the State which it represents, and that it makes no difference whether its action is in accord with that of other States. This lack of uniformity has been recognized to some extent, and it has led to such action looking toward harmony as could be taken by the National Convention of Railroad Commissioners. The action has borne fruit in the adoption of a blank for annual reports of railroads, and it is hoped that the Convention's influence may extend yet farther in the direction of uniformity.

For adequate control of the interstate business, however, we must look to Congress; and the solution of this entire question of control must come through a combination of national and State control, and a judicious division of powers. The discussion of this question is

<sup>1</sup> "Railway Problem," p. 150.

beyond the bounds of this essay. The line along which the question might be worked out is here suggested.

The State commissions should be granted the advisory and recommendatory power, with authority to certify to the courts refusals to obey in matters of public right. They should have authority to investigate local complaints of unjust discrimination with right to certify to the courts refusals to obey their orders; to examine into all questions of inadequate train-service, incompetent management of trains, obstruction of highways, accidents, and all questions concerning the physical condition of the roads and the comfort and convenience of the public; to compel complete and accurate reports from railroad companies in order that they may acquaint the public with all the details of railroad management, and be competent to pass reliable judgments upon general questions of railroad policy. They should be in no sense courts, sitting and hearing complaints brought before them, but should take the initiative in investigating matters of railroad policy. Thus they should not only form a medium between carrier and shipper for the settlement of controversies and the removal of misunderstandings, but should go farther, and prevent such misunderstandings and causes of bitterness from arising. Iowa's Advisory Commission accomplished great good in bringing shippers and carriers to realize that their jealousies and suspicions of each other were in large measure unfounded. They should also be arbitrators between the railroads themselves in the adjustment of difficulties concerning crossings, union stations, joint running arrangements, and the like. They should step between the railroads and their employees, require

automatic couplers and air-brakes, and otherwise provide for the safety of all concerned in the handling of trains. These powers should be uniform throughout the States, and the terminology of the laws should as far as possible be the same. Much may be expected from the National Convention of the State Railroad Commissioners, whose influence has been very potent for the promotion of uniformity of legislation as between the several States. To the National Commission should be given full and complete power of prescribing a general classification and a schedule of maximum rates for interstate business. If such a schedule were enforced, and the rates were made stable, there could be no inducement to discrimination and rate-cutting within a State, and the local rates could be left to the railroads. The objection that control from Washington would be at such a distance as to become impotent, could be overcome through the appointment of a commission of such size that it might be divided, and its members be assigned to different sections of the country. It might be advisable that one National Commissioner should sit in each State with the local board. There are, of course, many practical difficulties to the working out of such a scheme, but they are not insurmountable.

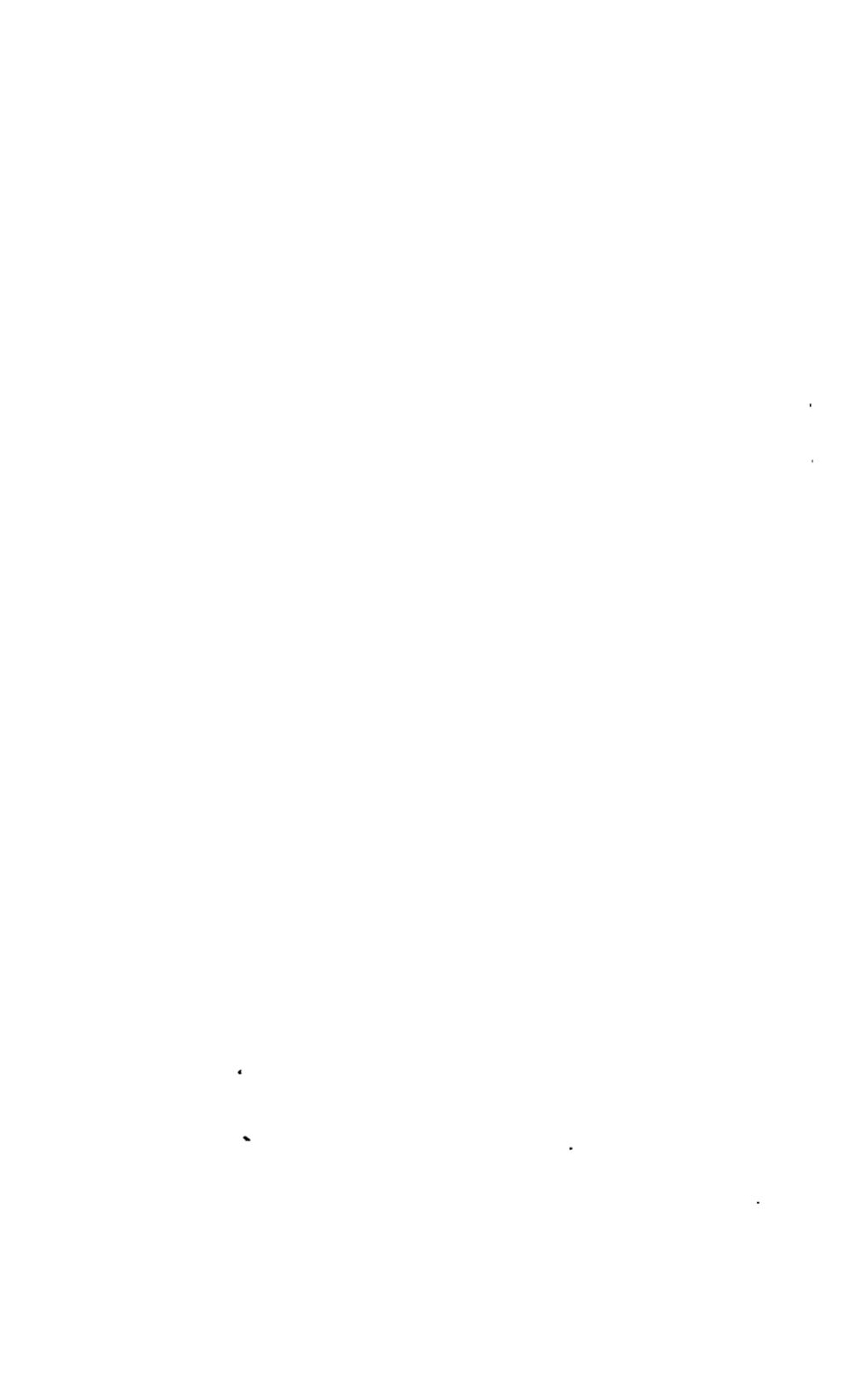
There is an almost resistless tendency at present toward the increase of national control over railroads.

"Every inconvenience, delay, and expense to the public, or to the railroads connected with the billing and transportation of interstate freight, or with the ticketing and carriage of through passengers, and growing out of the limitations imposed by States or corporate lines of division ; every case of excessive, unreasonable regulation, or of lax and careless supervision by State author-

ity; every corrupt or ignorant legislature; every instance of conflicting or multiform regulations by the several States; every difficulty in regulation or in management of whatever nature resulting from State lines; every attempt by a railroad corporation to escape State regulation by pleading that such regulation is unconstitutional as an interference with interstate commerce; every cut-throat struggle between competing lines; and, finally, the panacea for most of the foregoing evils, every consolidation,—furnishes an argument against State regulation, and in favor of the extension of Congressional control."<sup>1</sup>

The management of the entire railroad industry by Congress is a serious undertaking. If we read the signs of the times aright, however, some form of control stronger than that now exercised is inevitable. But such an outcome would by no means deprive the State commissions of their usefulness. A combined system of National and State control, instead of weakening the power of State boards, would, in fact, strengthen their authority by removing the embarrassments under which they now suffer from the problems of interstate commerce with which they are constantly besieged. In their own clearly defined field of action, already indicated, their activity would be increased and their success assured.

<sup>1</sup> Report of Commissioners on Railway Legislation to National Convention State Railroad Commissioners. (Report of Convention, May, 1890.)







## APPENDIX. I.

### **1. The Advisory Commission Law of 1878.**

(Chapter 77, Acts of the Seventeenth General Assembly;  
Approved March 23, 1878.)

AN ACT to repeal Chapter 68, Acts of the Fifteenth General Assembly, and provide for the establishment of a Board of Railroad Commissioners, and defining their duties and term of office.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That Chapter 68 of the Acts of the Fifteenth General Assembly, excepting Sections 1, 2, and 7 thereof, be and the same is hereby repealed, and the following be enacted:—

SEC. 2. The Governor, with the advice and consent of the Executive Council, shall, before the first day of April next, appoint three competent persons (one of whom shall be a civil engineer), who shall constitute a Board of Railroad Commissioners, and who shall hold their offices from the date of their respective appointment for the terms of one, two and three years, respectively, from the first day of April next. The Governor shall, in like manner, before the first day in April of each year thereafter, appoint a Commissioner, to continue in office for the term of three years from said day, and in case any vacancy occurs in the said board by resignation or otherwise, shall in the same manner appoint a Commissioner for the residue of the term, and may remove such Commissioners, and appoint others to fill their vacancy at any time, in the discretion of the Governor and Executive Council. No person owning any bonds, stock or property in any railroad company, or who is in the employment of, or who is in any way or manner pecuniarily interested in any railroad corporation, shall be eligible to the office of Railroad

Commissioner. Said Commissioners shall be qualified electors of the State. The Commissioners shall, as nearly as practicable, be selected, one from the eastern, one from the central, and one from the western portions of the State.

SEC. 3. Said Commissioners shall have the general supervision of all railroads in the State operated by steam, and shall inquire into any neglect or violation of the laws of this State by any railroad corporation doing business therein, or by the officers, agents or employees thereof, and shall also, from time to time, carefully examine and inspect the condition of each railroad in the State, and of its equipment, and the manner of its conduct and management, with reference to the public safety and convenience; and for the purpose of keeping the several railroad companies advised as to the safety of their bridges, shall make a semi-annual examination of the same, and report their condition to the said companies. And if any bridge shall be deemed unsafe by the Commissioners, they shall notify the railroad company immediately, and it shall be the duty of said railroad company to repair and put in good order, within ten days after receiving said notice, said bridge, and in default thereof said Commissioners are hereby authorized and empowered to stop and prevent said railroad company from running or passing its trains over said bridge while in its unsafe condition. Whenever in the judgment of the Railroad Commissioners it shall appear that any railroad corporation fails in any respect or particular to comply with the terms of its charter, or the laws of the State, or whenever in their judgment any repairs are necessary upon its road, or any addition to its rolling stock, or any addition to or change of its stations or station-houses, or any change in its rates of fare for transporting freight or passengers, or any change in the mode of operating its road and conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, said Railroad Commissioners shall inform such railroad corporation of the improvements and changes which they adjudge to be proper, by a notice thereof in writing, to be served by leaving a copy thereof, certified by the Commissioners' clerk, with any station agent, clerk, treasurer, or any director of said corporation,

and a report of the proceedings shall be included in the annual report of the Commissioners to the Legislature. Nothing in this section shall be construed as relieving any railroad company from their present responsibility or liability for damage to person or property.

SEC. 4. The said Railroad Commissioners shall on or before the first Monday in December in each year make a report to the Governor of their doings for the preceding year, containing such facts, statements and explanations as will disclose the working of the system of railroad transportation in this State, and its relation to the general business and prosperity of the citizens of the State, and such suggestions and recommendations in respect thereto as may to them seem appropriate. Said report shall also contain as to every railroad corporation doing business in this State —

*First.* The amount of its capital stock.

*Second.* The amount of its preferred stock, if any, and the condition of its preferment.

*Third.* The amount of its funded debt and the rate of interest.

*Fourth.* The amount of its floating debt.

*Fifth.* The cost and actual present cash value of its road and equipment, including permanent way, buildings and rolling stock, all real estate used exclusively in operating the road, and all fixtures and conveniences for transacting its business.

*Sixth.* The estimated value of all other property owned by such corporation, with a schedule of the same, not including lands granted in aid of its construction.

*Seventh.* The number of acres originally granted in aid of construction of its road by the United States or by this State.

*Eighth.* Number of acres of such land remaining unsold.

*Ninth.* A list of its officers and directors, with their respective places of residence.

*Tenth.* Such statistics of the road, and of its transportation business for the year, as may in the judgment of the Commissioners be necessary and proper for the information of the General Assembly, or as may be required by the Governor. Such report shall exhibit and refer to the condition of such corporation on the first day of July of each year, and the details of

its transportation business transacted during the year ending June 30.

*Eleventh.* The average amount of tonnage that can be carried over each road in the State with an engine of given power.

SEC. 5. To enable said Commissioners to make such a report, the president or managing officer of each railroad corporation doing business in this State shall annually make to the said Commissioners, on the fifteenth day of the month of September, such returns in the form which they may prescribe as will afford the information required for their said official report; such returns shall be verified by the oath of the officer making them; and any railroad corporation whose returns shall not be made as herein prescribed by the fifteenth day of September, shall be liable to a penalty of one hundred dollars for each and every day after the sixteenth day of September that such returns shall be wilfully delayed or refused.

SEC. 6. The said Commissioners shall hold their office in the Capitol or at some other suitable place in the city of Des Moines. They shall receive a salary of three thousand dollars per annum, to be paid as the salaries of other State officers are paid, and shall be provided at the expense of the State with necessary office furniture and stationery, and they shall have authority to appoint a secretary, who shall receive a salary of fifteen hundred dollars per annum.

SEC. 7. Said Commissioners and secretary shall be sworn to the due and faithful performance of the duties of their respective offices before entering upon the discharge of the same, as prescribed in Section 676 of the Code; and no person in the employ of any railroad corporation, or holding stock in any railroad corporation, shall be employed as secretary. Each of said Commissioners shall enter into bonds, with security to be approved by the Executive Council, in the sum of ten thousand dollars conditioned for the faithful performance of his duties.

SEC. 8. To provide a fund for the payment of the salaries and current expenses of the Board of Commissioners, they shall certify to the Executive Council, on or before the first day of January in each year, the amount necessary to defray the same, which amount shall be divided *pro rata* among the several rail-

way corporations, according to the assessed valuation of their property in the State. The Executive Council shall thereupon certify to the board of supervisors of each county the amount due from the several railway corporations located and operated in said county. And the board of supervisors shall cause the same to be levied and collected as other taxes upon railway corporations, and the county treasurer shall account to the State for the same, as provided by law for other State funds.

SEC. 9. The said Commissioners shall have power, in the discharge of the duties of their office, to examine any of the books, papers or documents of any such corporation, or to examine under oath or otherwise, any officer, director, agent or employee of any such corporation ; they are empowered to issue subpœnas and administer oaths in the same manner and with the same power to enforce obedience thereto in the performance of their said duties as belong and pertain to courts of law in this State ; and any person who may wilfully obstruct said Commissioners in performance of their duties, or who may refuse to give any information within his possession that may be required by said Commissioners within the line of their duty shall be deemed guilty of a misdemeanor, and shall be liable, on conviction thereof, to a fine not exceeding one thousand dollars, in the discretion of the court, the cost of such subpœnas and investigation to be first paid by the State on the certificate of said Commissioners.

SEC. 10. It shall be the duty of any railroad corporation, when within their power to do so, and upon reasonable notice, to furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight, and to receive and transport such freight with all reasonable despatch, and to provide and keep suitable facilities for the receiving and handling the same at any depot on the line of its road ; and also receive and transport in like manner the empty or loaded cars furnished by any connecting road, to be delivered at any station or stations on the line of its road, to be loaded or discharged, or reloaded and returned to the road so connecting ; and for compensation it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad for a similar service.

SEC. 11. No railroad corporation shall charge, demand or receive from any person, company or corporation, for the transportation of persons or property, or for any other service a greater sum than it shall at the same time charge, demand or receive from any other person, company or corporation for a like service, from the same place, or upon like condition and under similar circumstances ; and all concessions of rates, drawbacks and contracts for special rates shall be open to and allowed all persons, companies and corporations alike, at the same rate per ton per mile by car-load, upon like condition and under similar circumstances, unless by reason of the extra cost of transportation per car-load, from a different point, the same would be unreasonable and inequitable ; and shall charge no more for transporting freight from any point on its line than a fair and just proportion of the price it charges for the same kind of freight transported from any other point.

SEC. 12. No railroad company shall charge, demand or receive from any person, company or corporation an unreasonable price for the transportation of persons or property, or for the handling or storing of freight, or for the use of its cars, or for any privilege or service afforded by it in the transaction of its business as a railroad corporation.

SEC. 13. Any railroad corporation which shall violate any of the provisions of this Act, as to extortion or unjust discrimination, shall forfeit for every such offence, to the person, company or corporation aggrieved thereby, three times the actual damage sustained, or overcharges paid by the said party aggrieved, together with the cost of suit and a reasonable attorneys' fee to be fixed by the court ; and if an appeal be taken from the judgment, or any part thereof, it shall be the duty of the appellate court to include in the judgment an additional reasonable attorneys' fee, for services in the appellate court or courts, to be recovered in a civil action thereof. And in all cases where complaint shall be made in accordance with the provisions of Section 15 hereinafter provided, that an unreasonable charge is made, the Commissioners shall require a modified charge for the service rendered, such as they shall deem to be reasonable, and all cases of a failure to comply with the recommendation of the Commissioners

shall be embodied in the report of the Commissioners to the Legislature, and the same shall apply to any unjust discrimination, extortion or overcharge by said company, or other violation of law.

SEC. 14. Upon the occurrence of any serious accident upon a railroad, which shall result in personal injury or loss of life, the corporation operating the road upon which the accident occurred shall give immediate notice thereof to the Commissioners, whose duty it shall be, if they deem it necessary, to investigate the same, and promptly report to the Governor the extent of the personal injury or loss of life, and whether the same was the result of the mismanagement or neglect of the corporation on whose line the injury or loss of life occurred. *Provided*, That such report shall not be evidence, or referred to in any case in any court.

SEC. 15. It shall be the duty of said Commissioners, upon the complaint and application of the mayor and aldermen of any city, or the mayor and council of any incorporated town, or the trustees of any township, to make an examination of the rate of passenger fare, or freight tariff charged by any railroad company, and of the condition or operation of any railroad, any part of whose location lies within the limits of such city, town or township; and if twenty-five or more legal voters in any city or township shall, by petition in writing, request the mayor and aldermen of such city, or the trustees of such township, to make the said complaint and application, and the mayor and aldermen, or the trustees refuse or decline to comply with the prayer of the petition they shall state the reason for such non-compliance in writing upon the petition, and return the same to the petitioners, and the petitioners may thereupon, within ten days from the date of such refusal and return, present such petition to said Commissioners, and said Commissioners shall, if upon due inquiry and hearing of the petitioners, they think the public good demands the examination, proceed to make it in the same manner as if called upon by the mayor and aldermen of any city, or the trustees of any township. Before proceeding to make such examination in accordance with such application or petition, said Commissioners shall give to the petitioners and the corporation

reasonable notice in writing of the time and place of entering upon the same. If upon such an examination it shall appear to said Commissioners that the complaint alleged by the applicants or petitioners is well founded, they shall so adjudge, and shall inform the corporation operating such railroad of their adjudication within ten days, and shall also report their doings to the governor, as provided in the fourth section of this Act.

SEC. 16. In the construction of this act, the phrase railroad shall be construed to include all railroads and railways operated by steam, and whether operated by the corporation owning them or by other corporations or otherwise. The phrase railroad corporation shall be construed to mean the corporation which constructs, maintains or operates a railroad operated by steam power.

SEC. 17. Nothing in this Act shall be construed to stop or hinder persons or corporations from bringing suit against any railroad company for any violation of any of the laws of this State for the government of railroads.

SEC. 18. All Acts or parts of Acts inconsistent with this Act, are hereby repealed.

Sections Nos. 1, 2 and 7 of Chapter 68 of the Acts of the Fifteenth General Assembly, not repealed, are as follows: —

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That all railroad corporations organized or doing business in this State, their trustees, receivers, or lessees, under the laws or authority thereof, shall be limited in their maximum charges to the rates of compensation for the transportation of passengers and freight, which are herein prescribed. All railroads in this State shall be classified according to the gross amount of their respective annual earnings within the State, per mile, for the preceding year, as follows: Class "A" shall include all railroads whose gross annual earnings, per mile, shall be four thousand dollars (\$4,000) or more. Class "B" shall include all railroads whose gross annual earnings, per mile, shall be three thousand dollars (\$3,000) or any sum in excess thereof less than four thousand dollars (\$4,000). Class "C" shall include all railroads whose gross annual earnings, per mile, shall be less than three thousand dollars (\$3,000).

SEC. 2. All railroad corporations, according to their classifications as herein prescribed, shall be limited to compensation per mile for the transportation of any person, with ordinary baggage, not exceeding one hundred pounds in weight, as follows: Class "A," three cents; class "B," three and one-half cents; class "C," four cents: *Provided*, that no such corporation shall charge, demand or receive any greater compensation per mile for the transportation of children twelve years of age or under, than half the rates above prescribed: *And provided, also*, a charge of ten cents may be added to the fare of any passenger, when the same is paid upon the cars, if a ticket might have been procured within a reasonable time before the departure of the train.

SEC. 7. It shall be the duty of each railroad corporation operating a railroad in this State during the month of January, 1875, and each and every year thereafter, to make and return to the Governor a statement of its gross receipts on its entire road within this State for the year preceding and ending with the thirty-first day of December. Said statement shall be sworn to by the president and superintendent of the road in this State, and shall contain a detailed statement of the entire receipts for transporting freight and passengers, and all other sources of income of the road. A failure to comply with the provisions of this section shall subject the corporation so failing to a penalty of one hundred dollars per day, for each and every day after such report is due until it is made; to be recovered in an action in the name of the State of Iowa, for the benefit of the school fund. If the Executive Council shall, on examination, be satisfied of the correctness of said return, it shall be their duty to classify the different railroads in this State as hereinbefore provided, and the Governor, when there shall be any change in classification, shall issue a certificate to any corporation or corporations affected by such change, certifying to them the class to which they are respectively assigned. Any change of rates made by any railroad corporation pursuant to any change of classification, shall take effect and be in force from and after the fourth day of July following such changes. The reports from the railroad corporations of this State for the year 1873, made pursuant to the provisions of section 1280 of the Code, shall determine the classification of each road for the year ending July 3, 1875.

**2. The Amendment of 1884.**

(Chapter 133, Acts of the Twentieth General Assembly;  
Approved April 3, 1884.).

SECTION 1. The [Circuit and] District Courts of this State shall have jurisdiction to enforce, by proper decrees, injunctions and orders, the rulings, orders and regulations affecting public right, made or to be made by the Board of Railroad Commissioners, such as are now, or may hereafter be, authorized to be made by them for the future direction and observance of railroads in this State. The proceedings therefor shall be by equitable action in the name of the State of Iowa, and shall be instituted by the Attorney-General, whenever advised by the Board of Railroad Commissioners that any railway corporation, or person operating a line of road in this State, is violating and refusing to comply with any rule, order or regulation made by such Board of Railroad Commissioners, and applicable to such railroad or person. It shall be the duty of the court in which any such cause shall be pending to require the issues to be made up at the first term of the court to which such cause is brought, which shall be the trial term, and to give the same precedence over other civil business. If the court shall find that such rule, regulation or order is reasonable and just, and that in refusing compliance therewith said railway company is failing and omitting the performance of any public duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with such rule, order or regulation by said railroad company, or other person, its officers, agents, servants and employees, and may grant such other relief as may be deemed just and proper. All violations of such decree shall render the company, persons, officers, agents, servants and employees who are in any manner instrumental in such violations, guilty of contempt of court, and the court may punish such contempt by fine not exceeding one thousand dollars for each offence, and may imprison the person guilty of contempt until he shall sufficiently purge himself therefrom. And such decree shall continue and remain in effect, and be enforced until the rule, order or regulation shall be modified or vacated by the Board of Railroad Commissioners.

SEC. 2. Whenever a decree shall be entered against a railroad company or person under section one, the court shall render judgment for costs, including a reasonable attorney's fee for counsel representing the State in said case, and said judgment shall be enforced by execution.

### 3. The Law of 1888. Commission with Power.

(Chapter 28, Acts of the Twenty-second General Assembly;  
Approved April 5, 1888.)

AN ACT to regulate Railroad Corporations and other Common Carriers in this State and to increase the Powers and further define the Duties of the Board of Railroad Commissioners in relation to the same, and to prevent and punish Extortion and Unjust Discrimination in the Rates charged for the Transportation of Passengers and Freights on Railroads in this State, and to prescribe a Mode of Procedure and Rules of Evidence in relation thereto, and to repeal Section 11 of Chapter 77 of the Acts of the Seventeenth General Assembly in relation to the Board of Railroad Commissioners and all Laws in force in direct conflict with the Provisions of this Act.

SECTION. 1. To what Applicable.—The provisions of this Act shall apply to the transportation of passengers and property, and to receiving, delivering, storage and handling of property wholly within this State, and shall apply to all railroad corporations and railway companies, express companies, car companies, sleeping-car companies, freight or freight-line companies, and to any common carrier or carriers engaged in this State in the transportation of passengers or property by railroad therein, and shall also be held to apply to shipments of property made from any point within the State to any point within the State, whether the transportation of the same shall be wholly within this State or partly within this and an adjoining State or States. The term "railroad" as used in this Act shall include all bridges and ferries used or operated in connection with any railroad and also all the road in use by any corporation, receiver, trustee or other person operating a railroad, whether owned or operated under contract, agreement, lease or otherwise, and the term

"transportation" shall include all instrumentalities of shipment or carriage, and the term "railroad corporation" contained in this Act shall be deemed and taken to mean all corporations, companies or individuals now owning or operating, or which may hereafter own or operate any railroad in whole or in part in this State; and the provisions of this Act shall apply to all persons, firms and companies, and to all associations of persons whether incorporated or otherwise that shall do business as common carriers upon any of the lines of railway in this State (street railways excepted) the same as to railroad corporations herein mentioned.

**SEC. 2. Charges to be Reasonable.** — All charges made for any service rendered or to be rendered in the transportation of passengers or property in this State, as aforesaid or in connection therewith or for the receiving, delivering, storage or handling of such property shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

**SEC. 3. Unjust Discrimination.** — If any common carrier subject to the provisions of this Act shall directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this Act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful; this section, however, is not to be construed as prohibiting a less rate per one hundred pounds in a car-load lot than is charged, collected or received for the same kind of freight in less than a car-load lot.

**SEC. 4. No Preference or Advantage; Interchange.** — It shall be unlawful for any common carrier, subject to the provisions of this Act, to make or give any preference or advantage to any particular person, company, firm, corporation or locality or any particular description of traffic, in any respect whatsoever, or to

subject any particular person, company, firm, corporation or locality or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever ; *provided*, however, that nothing herein shall be construed to prevent any common carrier from giving preference as to time of shipment of live-stock, uncured meats, or other perishable property. All common carriers subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and switching of cars, and the receiving, forwarding and delivering of passengers and property to and from their several lines, and to and from other lines and places connected therewith ; and shall not discriminate in their accommodations, rates and charges between such connecting lines. And any common carrier may be required to switch and transfer cars for another for the purpose of being loaded or unloaded, upon such terms and conditions as may be prescribed by the Board of Railroad Commissioners.

**SEC. 5. Long and Short Haul.**— It shall be unlawful for any common carrier, subject to the provisions of this Act, to charge or receive any greater compensation in the aggregate for the transportation of passengers or of a like kind of property for a shorter than for a longer distance over its railroad, all or any portion of the shorter haul being included within the longer. And said common carrier shall charge no more for transporting freight to or from any point on its railroad than a fair and just rate as compared with the price it charges for the same kind of freight transportation to or from any other point.

**SEC. 6. Freight Pooling.**— It shall be unlawful for any common carrier, subject to the provisions of this Act, to enter into any contract, agreement or combination with any other common carrier or carriers for the pooling of freight of different and competing railroads, or divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof ; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offence.

**SEC. 7. Schedules of Rates and Fares.**— Every common car-

rier, subject to the provisions of this Act, shall print and keep for public inspection, schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established, and which are in force at the time upon its railroad as defined by the first section of this Act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroads between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately any terminal charges and any rules or regulations which in any wise change, affect or determine any part of the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type of at least the size of ordinary pica, and a copy for the use of the public shall be kept in every freight office and passenger station, on such railroad, where it can be conveniently inspected, and such common carrier shall keep a printed notice posted in every such freight office and passenger station indicating where therein such schedules can be found. No advance shall be made in the rates, fares and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedules then in force and the time when the increased rates, fares or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reduction in such published rates, fares or charges may be made without previous public notice, but whenever any such reduction is made, notice of the same shall immediately be publicly posted, and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection. And when any such common carrier shall have established and published its rates, fares and charges, in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect or receive from any person or persons a greater

or less compensation for the transportation of passengers or property, or for any services in connection therewith than is specified in such published schedule of rates, fares and charges as may at the time be in force. Every common carrier subject to the provisions of this Act shall file with the Board of Railroad Commissioners of this State, copies of its schedules of rates, fares and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commissioners of all changes made in the same. Every such common carrier shall also file with said Commissioners, copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes in this State operated by more than one common carrier and the several common carriers operating such lines or routes have established joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commissioners. Such joint rates, fares and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers, when directed by said Commissioners, in so far as may in the judgment of the Commissioners be deemed practicable ; and said Commissioners shall from time to time prescribe the measures of publicity which shall be given to such rates, fares and charges, or to such part of them as they may deem it practicable for such common carriers to publish and the places in which they shall be published ; but no common carrier, party to any such joint tariff shall be liable for the failure of any other common carrier party thereto, to observe and adhere to the rates, fares or charges thus made and published. If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares and charges as provided in this section or any part of the same, such common carriers shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus to be issued by any District Court of this State in the judicial district wherein the principal office of said common carrier is situated, or wherein such offence may be committed. And if such common carrier be a foreign corpora-

tion, then such writ may be issued by any District Court, in the judicial district where such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section, and such writ shall issue in the name of the State of Iowa at the relation or upon the petition of the said Board of Railroad Commissioners of this State; and failure to comply with its requirements shall be punishable as and for a contempt; and shall make said corporation liable to a penalty of five hundred dollars for each day's failure to comply, and when any such writ of mandamus, shall be so applied for by said Commissioners, no bond shall be required of them by any court or judge, in which or before whom any such application may be made.

**SEC. 8. Continuous Shipments.**—It shall be unlawful for any common carrier subject to the provisions of this Act to enter into any combination, contract or agreement, expressed or implied, to prevent by change of time schedules, carriage in different cars or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination in this State; and no break of bulk, stoppage or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

**SEC. 9. Liability; Treble Damages.**—In case any common carrier subject to the provisions of this Act shall do, cause to be done or permit to be done any act, matter or thing in this Act prohibited, or declared to be unlawful, or shall omit to do any act, matter or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby, for three times the amount of damages sustained in consequence of any such violation of the provisions of this Act, together with costs of suit and a reasonable counsel or attorney's fee to be fixed by the court in which the same is heard on appeal or otherwise, which shall be taxed and collected as part of the costs in the case;

*provided* that in all cases demand in writing on said common carrier shall be made for the money damages sustained before suit is brought for recovery under this section and that no suit shall be brought until the expiration of fifteen days after such demand.

**SEC. 10. Remedy ; Evidence.** — Any person or persons claiming to be damaged by any common carrier, subject to the provisions of this Act, may either make complaint to the Board of Railroad Commissioners of this State, or may bring suit in his or their own behalf for the recovery of damages for which any such common carrier may be liable under the provisions of this Act, in any court of this State of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies at the same time. In any such action brought for the recovery of damages, the court before whom the same shall be pending, may compel any director, officer, receiver, trustee or agent of the corporation or company, defendant in such suit to attend, appear and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claims that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person or witness from testifying or producing said books and papers; but such evidence or testimony shall not be used against such person in any way, on the trial of any criminal proceedings.

**SEC. 11. Penalty against Individuals.** — Except as otherwise specially provided for in sections twenty-three to twenty-eight inclusive, of this Act, and unless relieved from the consequences of a violation of the law as provided in section fifteen of this Act, any common carrier subject to the provisions of this Act, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent or person acting for, or employed by such corporation, who, alone or with any other corporation, company, person or party shall wilfully do, or cause to be done, or shall willingly suffer or permit to be done any act, matter or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this Act required to

be done, or shall cause or willingly suffer, or permit any act, matter or thing so directed or required by this Act to be done, not to be so done, or shall aid or abet any such omission, or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor and shall upon conviction thereof in any District Court of this State of competent jurisdiction be subject to a fine of not to exceed five thousand dollars and not less than five hundred dollars for each offence.

SEC. 12. **Inquiry by Commissioners.**— It shall be the duty of and the Board of Railroad Commissioners of this State shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and, shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the said Commissioners to perform the duties and carry out the object for which said Board was created and which are contemplated by this Act ; and for the purposes of this Act the said Commissioners shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, schedules, contracts, agreements and documents relating to any matter under investigation, and to that end may invoke the aid of any court of this State in requiring the attendance and testimony of witnesses and the production of books, papers and documents under the provisions of this section. And any court of this State within the jurisdiction of which such inquiry is carried on, shall in case of contumacy, or refusal to obey a subpoena, or other proper process issued to any common carrier or person subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commissioners (and produce books and papers if so ordered) and give evidence touching, or in relation to the matter in question; and any failure to obey such order of the court shall be punished by such court as a contempt thereof ; the claim that any such testimony or evidence may tend to criminate the person giving such evidence, shall not excuse such person or witness from ~~the~~; but such evidence or testimony

shall not be used against such person on the trial of any criminal proceeding.

SEC. 13. **Complaint.** — Any person, firm, corporation or association, or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization, complaining of anything done or omitted to be done, by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commissioners by petition which shall briefly state the facts, whereupon a statement of the complaint thus made with the damages if any are alleged shall be forwarded by the said Commissioners to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing within a reasonable time to be specified by the Commissioners. If such common carrier within the time specified shall make reparation for the injury alleged to have been done or shall correct the wrong complained of, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such common carrier shall not satisfy the complaint, within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the said Commissioners to investigate the matters complained of in such manner and by such means as said Commissioners shall deem proper, and said Commissioners whenever they may have sufficient reason to believe that any common carrier is violating any of the provisions of this Act shall at once institute an inquiry in the same manner, and to the same effect, as though complaint had been made. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant or complainants or petitioners.

SEC. 14. **Investigation ; Report.** — Whenever an investigation shall be made by said Commissioners after notice as provided by section thirteen of this Act, it shall be their duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commissioners are based, together with its or their recommendation or orders as to what reparation, if any, should be made by the common carrier to any party, or parties, who may be found to have

been injured; and such finding, so made shall thereafter in all judicial proceedings be deemed and taken as *prima facie* evidence as to each and every fact found. All reports of investigation made by said Commissioners shall be entered of record, and a copy thereof shall be furnished to the party who may have complained and any other person or persons directly interested, and to any common carrier that may have been complained of.

SEC. 15. **Findings; Notice.**—If in any case in which an investigation shall be made by said Commissioners it shall be made to appear to the satisfaction of the Commissioners, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this Act or of any law cognizable by said Commissioners by any common carrier, or that any injury or damages has been sustained by the party or parties complaining or by other parties aggrieved in consequence of any such violation it shall be the duty of said Commissioners forthwith to cause a copy of their report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both within a reasonable time to be specified by the Commissioners; and if within the time specified it shall be made to appear to the Commissioners that such common carrier has ceased from such violation of law and has made reparation for the injury found to have been done in compliance with the report and notice of the Commissioners, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commissioners, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

SEC. 16. **Enforcement of Orders.**—Whenever any common carrier as defined in and subject to the provisions of this Act shall violate or refuse or neglect to obey any lawful order or requirement of the said Board of Railroad Commissioners, it shall be the duty of said Commissioners, and lawful for any company or person interested in such order or requirement to apply in a summary way, by petition to the District or Superior Court in any county of this State in which the common carrier com-

plained of has its principal office, or in any county through which its line or road passes or is operated, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said Commissioners shall be *prima facie* evidence of the matter therein, or in any order made by them stated; and if it be made to appear to such court on such hearing or on the report of any such person or persons, that the order or requirement of said Commissioners drawn in the question, has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commissioners and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such courts to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers or agents of the same, or against any owner, lessee, trustee, receiver or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other process,

mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of one thousand dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such monies (moneys) shall, upon the order of the court, be paid into the treasury of the county in which the action was commenced and one-half thereof shall be transferred by the county treasurer to the State treasury; and the payment thereof may without prejudice to any other mode of recovering the same be enforced by attachment or order, in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree *in personam* in such court, saving to the Commissioners and any other party or person interested the right to appeal to the Supreme Court of the State under the same regulations now provided by law in relation to appeals to said court as to security for such appeal except that in no case shall security for such appeal be required when the same is taken by said Commissioners; but no appeal to said Supreme Court shall operate to stay or supersede the order of the court, or the execution of any writ or process thereon; and such court may in every such matter order the payment of such costs and attorney and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented, or be prosecuted by the said Commissioners, or by their direction, it shall be the duty of the Attorney-General of the State to prosecute the same, and in such prosecution he shall have the right to have the assistance of any county attorney of the county in which any such proceedings are instituted, and it is hereby made the duty of any such county attorney to render such assistance; and the costs and expenses on the part of said Commissioners of any such prosecution shall be paid out of the appropriations for the expenses of said Board of Commissioners.

SEC. 17. Commissioners to make Schedules. — The Board of Railroad Commissioners of this State are hereby empowered and directed to make for each of the railroad corporations, doing business in this State, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of freight and cars on each of said railroads, and said power to

make schedules shall include the power of classification of all such freights, and it shall be the duty of said Commissioners to make such classification ; *provided*, that the said rates of charges to be so fixed by said Commissioners shall not in any case exceed the rates which are or may hereafter be established by law ; and said schedules so made by said Commissioners, shall in all suits brought against any such railroad corporations, wherein is in any way involved the charges of any such railroad corporation for the transportation of any freight or cars or unjust discrimination in relation thereto be deemed and taken in all courts of this State as *prima facie* evidence that the rates therein fixed are reasonable and just maximum rates of charges for the transportation of freight and cars upon the railroads for which said schedules may have been respectively prepared. Said Commissioners shall from time to time, and as often as circumstances may require, change and revise said schedules, subject to the same provision that the rates fixed are not to be higher than now or hereafter established by law. When any schedule shall have been made or revised as aforesaid, it shall be the duty of said Commissioners to cause notice thereof to be published for two successive weeks in some public newspaper published in the city of Des Moines in this State, which notice shall state the date of the taking effect of said schedule and said schedule shall take effect at the time so stated in such notice and a printed copy of said revised schedule shall be conspicuously posted by such common carrier in each freight office and passenger depot upon its line or lines. All such schedules, so made, shall be received and held in all such suits as *prima facie* the schedule of said Commissioners without further proof than the production of the schedule desired to be used as evidence, with a certificate of said Railroad Commissioners, that the same is a true copy of the schedule prepared by them for the railroad company or corporation therein named, and that notice of making the same has been published as required by law ; *provided*, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the Railroad Commissioners to publish ten days' notice in two daily papers published in Des Moines setting forth in such notice that at a certain time and place they

will proceed to fix and determine such maximum rates and classification ; and they shall at such time and place and as soon as practicable afford to any person, firm, corporation or common carrier who may desire it an opportunity to make an explanation or showing or to furnish information to said Commissioners on the subject of determining and fixing such maximum rates and classification ; and in any event the original schedule of rates and classification of freights on all lines of railroads in Iowa shall be fixed and shall go into effect within sixty days from the taking effect of this Act.

**SEC. 18. Complaint of Violation of Schedule.** — Whenever any person upon his own behalf, or class of persons similarly situated, or any firm, corporation or association, or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization, shall make complaint to said Board of Railroad Commissioners, that the rate charged or published by any railroad company, or the maximum rates fixed by said Commissioners in the schedules of rates made by them under the provisions of section seventeen of this Act, or the maximum rate that now or hereafter may be fixed by law is unreasonably high or discriminating, it shall be the duty of said Commissioners to immediately investigate the matter of such complaint. If such complaint appears to be well founded and not trivial in character, the Board shall fix a day for hearing the same and shall notify the railroad company of the time and place of such hearing by mailing a notice properly directed to any division superintendent, general or assistant superintendent, general manager, president or secretary of such company, which notice shall contain the substance of the complaint so made, and the Board shall also notify the person or persons complaining of such time and place.

**SEC. 19. Hearing; Evidence.** — Upon such hearing so provided for, the said Commissioners shall receive whatever evidence, statements or arguments either party may offer or make pertinent to the matter under investigation ; and the burden of proof shall not be held to be upon the person or persons making the complaint, but the Commissioners shall add to the showing made at such hearing whatever information they may then have, or can secure from any source whatsoever, and the person or

persons complaining shall be entitled to introduce any published schedules of rates of any railroad company, or evidence of rates actually charged by any railroad company for substantially the same kind of service, whether in this or any other State; and the lowest rates published or charged by any railroad company for substantially the same kind of service, whether in this or any other State, shall, at the instance of the person or persons complaining be accepted as *prima facie* evidence of a reasonable rate for the services under investigation, and if the railroad company complained of is operating a line of railroad beyond the State of Iowa, or if it appears that it has a traffic arrangement with any such railroad company, then the Commissioners in determining what is a reasonable rate, shall take into consideration the charge made, or rate established by such railroad company or the company with which it has traffic arrangements for carrying freight from beyond the State to points within the State, and from within the State to points beyond [the] State; and if such company be operating a line of railway beyond the State they shall also take into consideration the rate charged or established for a substantially similar or greater service by such company in any other State in which said railroad company operates a line of railway.

SEC. 20. Decision.—After such hearing and investigation the said Commissioners shall fix and determine the maximum charge to be thereafter made by the railroad company or common carriers complained of, which charge shall in no event exceed the one now or hereafter fixed by law, and the said Commissioners shall render their decision in writing; and shall spread the same at length in the record to be kept for that purpose; such decision shall, specifically, set out the sums or rate which the railroad company or common carrier, so complained of, may thereafter charge or receive for the service therein named and including a classification of such freight, and the said Commissioners shall not be limited in their said decision and the schedule to be contained therein to the specific case or cases complained of, but it shall be extended to all such rates between points in this State and whatever part of the line of railway of such company or common carrier within this State as may have been fairly within the scope of such investigation, and any such decisions so made

and entered on record of said Commissioners, including any such schedules and classifications, shall, when duly authenticated, be received and held in all suits brought against any such railroad corporation or common carrier wherein is in any way involved the charges of any such corporation or carrier mentioned in said decisions, in any of the courts of this State, as *prima facie* evidence that the rates therein fixed are reasonable maximum rates, the same as the schedules made by said Commissioners as provided in section seventeen thereof; and the rates and classifications so established after such hearing and investigation shall from time to time thereafter upon complaint duly made be subject to revision by said Commissioners the same as any other rates and classifications.

**SEC. 21. Proceedings of Commissioners.** — That the said Board of Railroad Commissioners may in all cases conduct its proceedings when not otherwise particularly prescribed by law, in such manner as will best conduce to the proper despatch of business and to the ends of justice. A majority of the Commissioners shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commissioners may, from time to time, make or amend such general rules, or orders, as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform as nearly as may be to those in use in courts of this State. Any party may appear before said Board of Commissioners and be heard in person or by attorney. Every vote and official action of said Board of Commissioners shall be entered of record, and its proceedings shall be public upon the request of either party or any person interested. Said Board of Railroad Commissioners shall have an official seal, which shall be judicially noticed, and every Commissioner shall have the right to administer oaths and affirmations in any proceeding pending before said Board.

**SEC. 22. Annual Reports.** — The said Board of Railroad Commissioners is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, to fix the time and prescribe the manner in which such reports shall

be made, and to require from such carriers specific answers to all questions upon which the said Commissioners may need information. Such annual reports shall show in detail the amount of the capital stock issued, the amounts paid therefor, and the manner of the payment of the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the costs and value of the carrier's property, franchises and equipment; the number of employees, and the salaries paid each class; the amounts expended for improvements each year, how and where expended, and the character of such improvements; the earnings and receipts from each branch of business, and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations, concerning fares or freights, or agreements, arrangements, or contracts with other common carriers as the Commissioners may require; and the said Board of Commissioners may within its discretion, for the purpose of enabling it the better to carry out the purpose of this Act (if in the opinion of the Commissioners it is practicable to prescribe such uniformity and methods of keeping accounts), prescribe a period of time within which all common carriers subject to the provisions of this Act shall have as near as may be a uniform system of accounts, and the manner in which such accounts shall be kept.

**SEC. 23. Extortion ; Penalty.** — If any railroad corporation or common carrier subject to the provisions of this Act, shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description or for the use and transportation of any railroad car upon its track, or any of the branches thereof, or upon any railroad within this State which it has the right, license or permission to use, operate or control or shall make any unjust and unreasonable charge prohibited in section two of this Act, the same shall be deemed guilty of extortion, and shall be dealt with as hereinafter provided, and if any such railroad corporation (or common carrier) shall be

found guilty of any unjust discrimination as defined in section three of this Act, upon conviction thereof, shall be dealt with as hereinafter provided.

**SEC. 24. Discrimination; Punishment.** — If any such railroad corporation shall charge, collect or receive for the transportation of any passenger or freight of any description upon its railroad for any distance within this State, a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation in the same direction of any passenger or like quantity of freight of the same class over a greater distance of the same railroad; or if it shall charge, collect or receive at any point upon its railroad a higher rate of toll or compensation for receiving, handling or delivering freight of the same class and quantity, than it shall at the same time charge, collect or receive for the transportation of any passenger or freight of any description over its railroad a greater amount as toll or compensation than shall at the same time be charged, collected or received by it for the transportation of any passenger or like quantity of freight of the same class being transported in the same direction over any portion of the same railroad of equal distance; or if it shall charge, collect or receive from any person or persons a higher or greater amount of toll or compensation than it shall at the same time charge, collect or receive from any other person or persons for receiving, handling or delivering freight of the same class and like quantity, at the same point upon its railroad; or if it shall charge, collect or receive from any person or persons, for the transportation of any freight upon its railroad, a higher or greater rate of toll or compensation than it shall, at the same time, charge, collect or receive from any other person or persons, for the transportation of the like quantity of freight of the same class, being transported from the same point in the same direction, over equal distances of the same railroad, or if it shall charge, collect or receive, from any person or persons, for the use and transportation of any railroad car or cars upon its railroad, for any distance, a greater amount of toll or compensation than is at the same time charged, collected or received from any other person or persons, for the use and transportation of any railroad car of the same class or number, for a

like purpose, being transported in the same direction, over a greater distance of same railroad; or if it shall charge, collect or receive from any person or persons, for the use and transportation of any railroad car or cars upon its railroad, a higher or greater compensation in the aggregate, than it shall, at the same time, charge, collect or receive from any other person or persons, for the use and transportation of any railroad car or cars of the same class for a like purpose, being transported from the same original point, in the same direction, over an equal distance of the same railroad; all such discriminating rates, charges, collection or receipts, whether made directly or by means of any rebate, drawback, or other shift or evasion, shall be deemed and taken, against such railroad corporation, as *prima facie* evidence of the unjust discriminations prohibited by the provisions of this Act; and it shall not be deemed a sufficient excuse or justification of such discrimination on the part of said railroad corporation, that the railway station or point at which it shall charge, collect or receive less compensation in the aggregate for the transportation of such passenger or freight, or for the use and transportation of such railroad car the greater distance than for the shorter distance, is a railway station or point at which there exists competition with any other railroad or means of transportation. This section shall not be construed so as to exclude other evidence tending to show any unjust discrimination in freight and passenger rates. The provisions of this section shall extend and apply to any railroad, the branches thereof, and any road or roads which any railroad corporation has the right, license or permission to use, operate or control wholly or in part, within this State; *provided*, however, that nothing herein contained shall be so construed as to prevent railroad corporations from issuing commutation, excursion, or thousand-mile tickets; *provided* the same are issued alike to all applying therefor.

SEC. 25. **Discrimination as to Quantity.** — It shall be unlawful for any such common carrier to charge, collect, demand or receive more for transporting a car of freight than it at the same time charges, collects, demands or receives per car for several cars of a like class of freight over the same railroad, for the same distance, in the same direction, or to charge, collect, demand or

receive more for transporting a ton of freight than it charges, collects, demands or receives per ton for several tons of freight under a car-load of a like class of freight over the same railroad for the same distance, in the same direction, or to charge, collect, demand or receive more for transporting a hundred pounds of freight than it charges, collects, demands or receives per hundred for several hundred pounds of freight, under a ton, of a like class of freight over the same railroad, for the same distance, in the same direction, all such discriminating rates, charges, collections or receipts, whether made directly or by means of any rebate, drawback or other shift or evasion, shall be deemed and taken against such railroad company as *prima facie* evidence of the unjust discrimination prohibited by this Act; *provided*, however, that for the protection and development of any new industry within this State, such railroad company may grant concessions or special rates for any agreed number of car-loads, but such special rates aforesaid shall first be approved by the Board of Railroad Commissioners, and a copy thereof filed in the office thereof.

**SEC. 26. Penalty for Discrimination.** — Any such railroad corporation guilty of extortion or making any unjust discrimination as to passenger or freight rates for the use and transportation of railroad cars or in receiving, handling or delivering freights, shall upon conviction thereof, be fined in any sum not less than one thousand dollars nor more than five thousand dollars for the first offence; and for every subsequent offence not less than five thousand dollars nor more than ten thousand dollars, such fine to be imposed in a criminal prosecution by indictment, or shall be subject to the liability prescribed in the next succeeding section to be recovered as therein provided.

**SEC. 27. Forfeiture.** — Any such railroad corporation guilty of extortion or of making any unjust discrimination as to passenger or freight rates or the rates for the use and transportation of railroad cars, or in receiving, handling or delivering freights, shall forfeit and pay to the State of Iowa not less than one thousand dollars nor more than five thousand dollars for the first offence; and not less than five nor more than ten thousand dollars for every subsequent offence, to be recovered in a civil action by proceedings

instituted in the name of the State of Iowa. And the release from liability or penalty provided for in section fifteen of this Act shall not apply to either a criminal prosecution under the last preceding section or a civil action brought under this section.

**SEC. 28. Suits by Commissioners.**— Whenever said Railroad Commissioners have good reason to believe, that any railroad corporation or common carrier subject to the provisions of this Act has been guilty of extortion or unjust discrimination and thereby become liable to the penalties prescribed in sections twenty-six and twenty-seven hereof, it shall be their duty to immediately cause suits to be commenced and prosecuted against any such railroad corporation or common carrier. Such suits and prosecutions may be instituted in any county of this State through or into which the line of the railroad corporation sued for violation of this act may extend. And such Railroad Commissioners are hereby authorized, when in their judgment it is necessary so to do, to employ counsel to assist the Attorney-General in conducting such suit on behalf of the State. No such suits commenced by said Commissioners shall be dismissed unless the said Commissioners and the Attorney-General shall consent thereto. And the court may in its discretion give preference to such suits over all other business except criminal cases.

**SEC. 29. Free Transportation; Reduced Rates.**— Nothing in this Act shall apply to the carriage, storage or handling of property free or at reduced rates for the United States or this State or municipal governments or for charitable purposes, or to and from fairs and expositions for exhibition thereat, or for the employees of such common carriers or their families or private property or goods for the family use of the employees of such common carriers, or the issuance of mileage, excursion or commutation passenger tickets. Nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to prevent railroads from giving free carriage to their own officers and employees and their families dependent upon said officer or employee for support, and to persons in charge of live-stock being shipped from the point of shipment to destination and return, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with

other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies; *provided*, that no pending litigation shall in any way be affected by this Act.

SEC. 30. **Commissioners transported Free.**—The said Railroad Commissioners and their secretary shall have the right of free transportation in the performance of their duties concerning railroads, on all railroads and railroad trains in this State; and they may take with them experts or other agents whose services they may require and who shall in like manner be transported free of charge.

SEC. 31. **Appropriation.**—To defray the necessary expenses of the said Railroad Commissioners in making investigations and prosecuting suits and to pay all necessary costs attending the same under the provision of this Act there is hereby appropriated, out of any money in the State treasury not otherwise appropriated, the sum of ten thousand dollars, or so much thereof as may be necessary, to be drawn upon warrants of the State auditor issued upon the requisition of said Commissioners, approved by the Governor, which requisition shall be accompanied by an itemized statement of the costs and expenses to be paid.

SEC. 32. Section eleven of chapter seventy-seven of the Acts of the Seventeenth General Assembly in relation to the Board of Railroad Commissioners, and all laws now in force in direct conflict with any of the provisions of this Act, are hereby repealed.

#### **Report to Railroad Commissioners**

(Chapter 27 of the Acts of the Twenty-fourth General Assembly.)

AN ACT to amend Section No. 22, of Chapter No. 28, of the Acts of the Twenty-second General Assembly, relating to reports to be made to the Board of Railroad Commissioners.  
Approved April 8, 1892.

That Section No. twenty-two (22) of Chapter No. twenty-eight (28) of the Acts of the Twenty-second General Assembly

be amended by adding thereto, at the end thereof, the following words: —

“Such reports shall also contain such other statistics of the road and of its transportation business for the year ending upon the thirtieth day of June of each year as the Commissioners shall require, and all such reports should be made to said Board of Railroad Commissioners, on or before the fifteenth day of September of each year.

“The Board of Railroad Commissioners is also hereby authorized to require of any and all common carriers, subject to the provisions of this chapter, such other reports, besides the annual reports hereby required, as in the judgment of such Board of Commissioners shall be deemed necessary and reasonable. Such reports shall be in such form and concerning such subjects and be from such sources as the Commissioners shall require, except as otherwise provided herein.

“The time when such reports shall be filed shall be fixed by the Board of Railroad Commissioners. Any corporation, company or individual owning or operating a railway within this State which shall fail, neglect or refuse to make any of the reports provided for herein by the date fixed herein, or that fixed by the Board of Railroad Commissioners, shall be subject to and pay a penalty in the sum of one hundred dollars for each and every day of delay in making such reports after the date fixed.”

#### 4. The Joint Rate Act.

(Chapter 17, Acts of Twenty-third General Assembly.  
Took effect by publication, April 16, 1890.)

**SECTION 1. Permitted.** — That Chapter twenty-eight of the Acts of the Twenty-second General Assembly be and the same hereby is amended as follows: That said chapter twenty-eight of the Acts of the Twenty-second General Assembly shall not be construed to prohibit the making of rates by two or more railroad companies for the transportation of property over two or more of their respective lines of railroad within this State, and a less charge by each of said railroad companies for its portion of such joint shipment than its charges for a shipment for the same dis-

tance wholly over its own line within the State, shall not be considered a violation of said chapter twenty-eight of the Acts of the Twenty-second General Assembly, and shall not render such railroad company liable to any of the penalties of said Act, but the provisions of this section shall not be construed to permit railway companies, establishing joint rates, to make by such joint rates any unjust discrimination between the different shipping points or stations upon their respective lines between which joint rates are established, and any such unjust discrimination shall be punished in the manner and by the penalties provided by chapter twenty-eight of the Acts of the Twenty-second General Assembly.

**SEC. 2. Reasonable Through Rates.**—All railway companies doing business in this State shall, upon the demand of any person or persons interested, establish reasonable joint through rates for the transportation of freight between points upon their respective lines within this State, and shall receive and transport freight and cars over such route or routes as the shipper shall direct. Car-load lots shall be transferred without unloading from the cars in which such shipments were first made, unless such unloading in other cars shall be done without charge therefor to the shipper or receiver of such car-load lots, and such transfer be made without unreasonable delay, and less than car-load lots shall be transferred into the connecting railway's cars at cost, which shall be included in and made a part of the joint rate adopted by such railway companies or established as provided by this Act. When shipments of freight to be transported between different points within this State are required to be carried by two or more railway companies operating connecting lines, such railway companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or State traffic as they give to interstate traffic over their lines of road.

**SEC. 3. Commissioners may establish.**—In the event that said railway companies fail to establish through joint rates or fail to establish and charge reasonable rates for such through shipments, it shall be the duty of the Board of Railroad Commissioners and they are hereby directed, upon the application of any person or

persons interested to establish joint rates for the shipment of freight and cars over two or more connecting lines of railroad in this State, and in the making of such rates and in changing or revising the same, they shall be governed, as near as may be, by all the provisions of chapter twenty-eight of the Acts of the Twenty-second General Assembly, and shall take into consideration the average of rates charged by said railway companies for shipments within this State for like distances over their respective lines, and rates charged by the railway companies operating such connecting lines for joint interstate shipments for like distances. The rates established by the Board of Railroad Commissioners shall go into effect within ten days after the same are promulgated by said Board, and from and after that time the schedule of rates shall be *prima facie* evidence in all of the courts of this State that the joint transportation of freight and cars upon the railroads for which such schedules have been fixed.

**SEC. 4. Notice ; Division.** — Before the promulgation of such rates as provided in section three of this Act, the Board of Railroad Commissioners shall notify the railroad companies interested in the schedule of joint rates fixed by them; and they shall give said railroad companies a reasonable time thereafter to agree upon a division of the charges provided for in such schedule, and, in the event of the failure of said railroad companies to agree upon a division and to notify the Board of such agreement, the Board of Railroad Commissioners shall, after a hearing of the companies interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by the Board shall, in all controversies or suits between the railroad companies interested, be *prima facie* evidence of a just and reasonable division of such charges.

**SEC. 5. Unreasonable Charges.** — Every unjust and unreasonable charge for the transportation of freight and cars over two or more railroads in this State is hereby prohibited and declared to be unlawful, and each and every one of the companies making such unreasonable and unlawful charges, or otherwise violating the provisions of this Act, shall be punished as provided in chapter twenty-eight of the Acts of the Twenty-second General

Assembly for the making of unreasonable charges for the transportation of freight and cars over a single line of railroad by a single company.

**Joint Rates on Railways.**

(Chapter Twenty-five of the Acts of the Twenty-fourth General Assembly.)

AN ACT to amend Chapter No. 17 of the Acts of the Twenty-third General Assembly [*Joint Rates on Railways*]. Approved April 7, 1892.

SECTION 1. That chapter seventeen of the Acts of the Twenty-third General Assembly be amended by inserting between the words "the" and "joint" in the twentieth line of section No. three of said Act the following words, to wit: "Rates therein fixed are reasonable and just maximum rates for the."

SEC. 2. This Act being deemed of immediate importance, shall take effect and be in force from and after its publication in the *Iowa State Register* and *Des Moines Leader*, newspapers published at Des Moines, Iowa.

## APPENDIX II.

### List of the Iowa Commissioners, 1878-1894.

YEAR.	COMMISSIONERS.	YEAR.	COMMISSIONERS.
1878	James W. McDill. Peter A. Dey. { C. C. Carpenter. M. C. Woodruff.	1887	Peter A. Dey. L. S. Coffin. Spencer Smith.
1879	James W. McDill. Peter A. Dey. M. C. Woodruff.	1888	Peter A. Dey. Spencer Smith. Frank T. Campbell.
1880	James W. McDill. Peter A. Dey. M. C. Woodruff.	1889	Peter A. Dey. Spencer Smith. Frank T. Campbell.
1881	Peter A. Dey. M. C. Woodruff. A. R. Anderson.	1890	Spencer Smith. Peter A. Dey. Frank T. Campbell.
1882	Peter A. Dey. A. R. Anderson. James Wilson.	1891	Frank T. Campbell. Spencer Smith. John W. Luke.
1883	Peter A. Dey. A. R. Anderson. L. S. Coffin.	1892	Spencer Smith. John W. Luke. Peter A. Dey.
1884	Peter A. Dey. L. S. Coffin. James W. McDill.	1893	John W. Luke. Peter A. Dey. George W. Perkins.
1885	Peter A. Dey. James W. McDill. L. S. Coffin.	1894	John W. Luke. Peter A. Dey. George W. Perkins.
1886	Peter A. Dey. James W. McDill. L. S. Coffin.		



